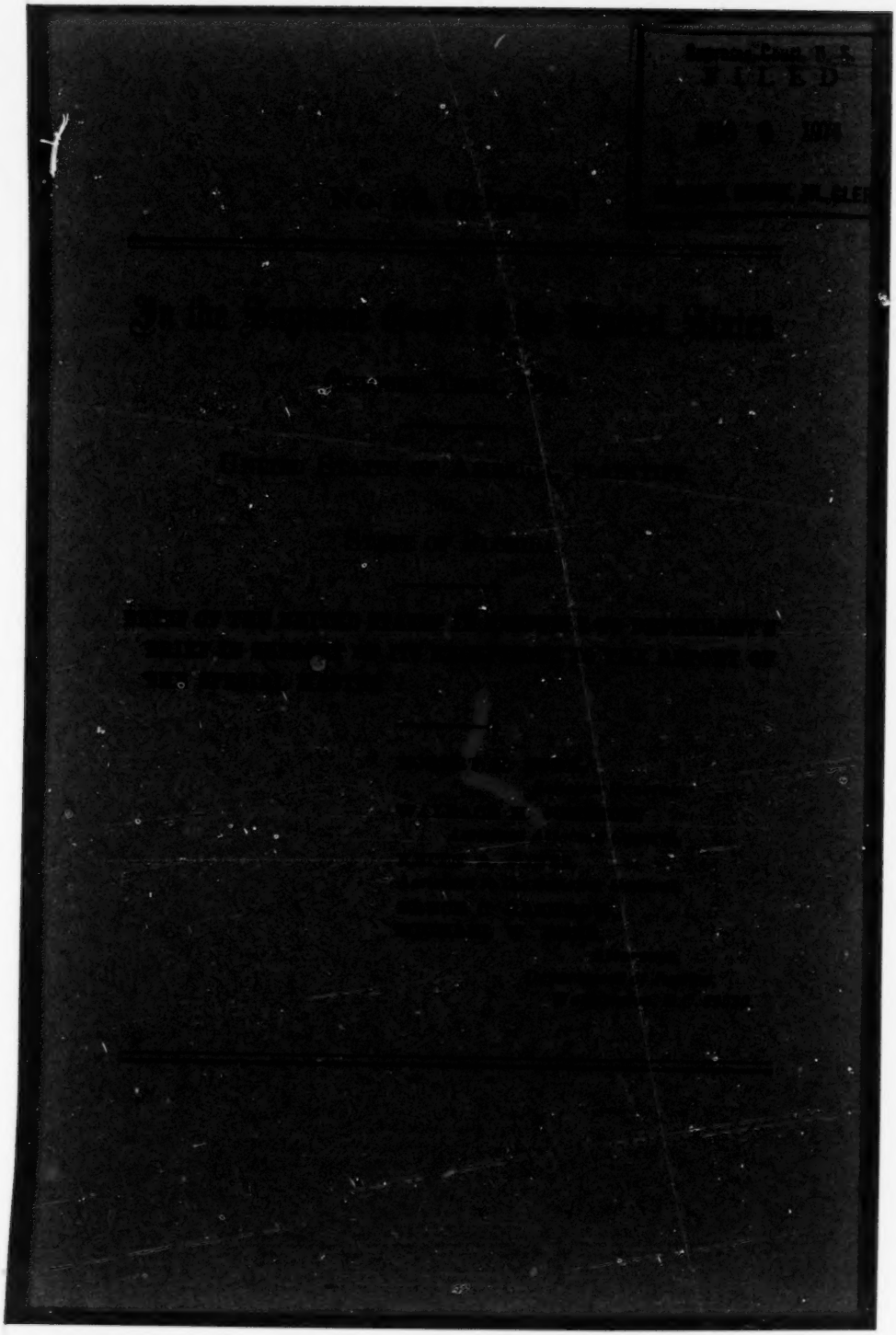

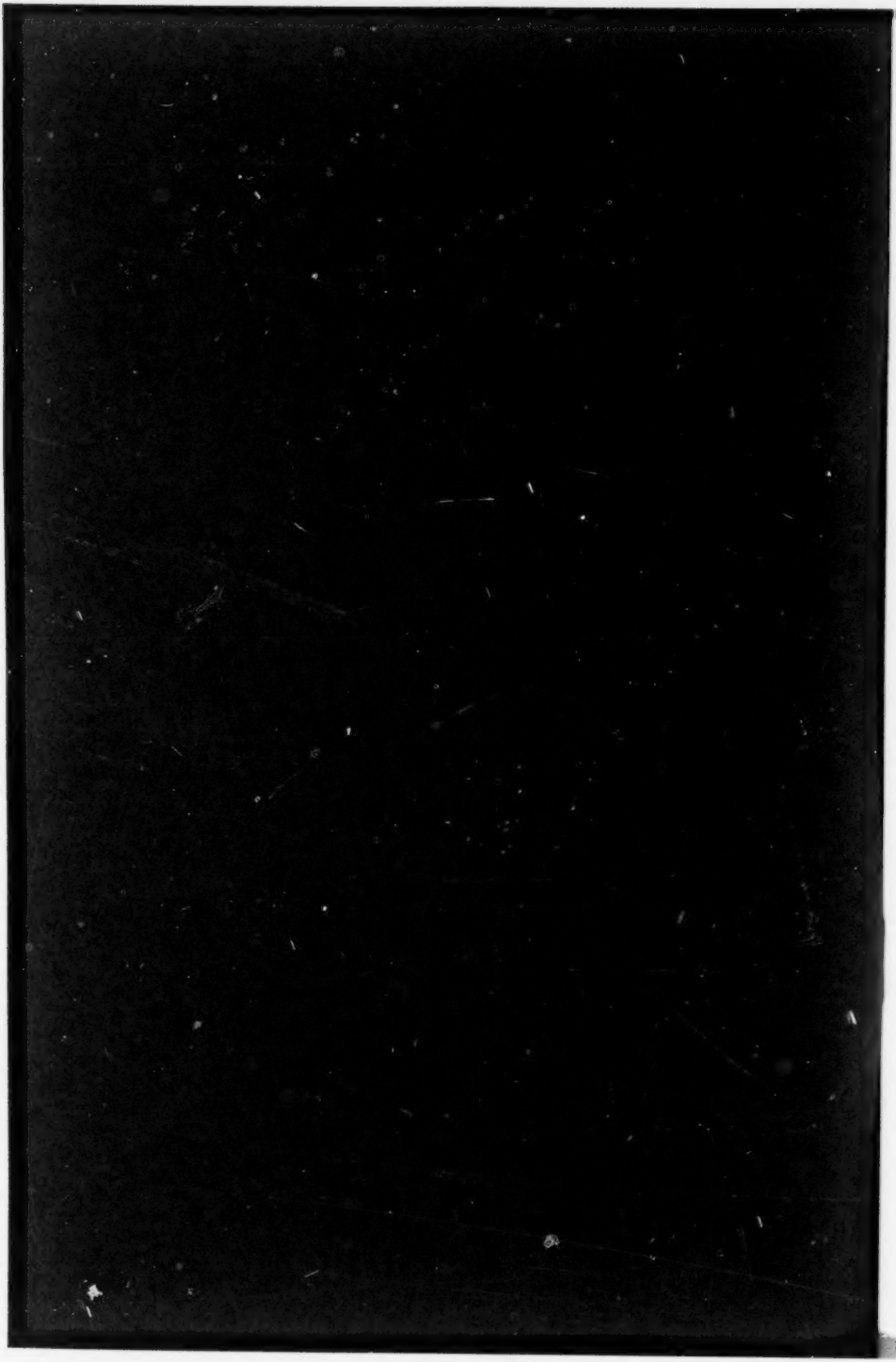

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In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 52, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF FLORIDA

BRIEF OF THE UNITED STATES IN RESPONSE TO DEFENDANT'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

INTRODUCTION

This case involves the respective rights of the State of Florida and the United States in the natural resources of the seabed adjacent to the State's coasts, in both the Atlantic Ocean and the Gulf of Mexico. The facts are set forth at pages 2 through 6 of our brief in support of the United States' exceptions to the Report of the Special Master. In this brief we respond to the State's brief in support of its exceptions to that Report.

In previous litigation between these parties, this Court determined that the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, grants the State ownership of

the resources of the seabed within three geographic miles of its coastline along the Atlantic Ocean, and within three marine leagues of its coastline along the Gulf of Mexico. *United States* v. *Florida,* 363 U.S. 121; *United States* v. *Louisiana,* 364 U.S. 502.

In this litigation the State asserts that congressional approval of its 1868 constitution effected a grant to the State of proprietary rights in all resources of the seabed within its historic boundary which, the State claims, lay seaward of the maximum grants of three geographic miles and three marine leagues under the Act. The Special Master, relying upon *United States* v. *California,* 332 U.S. 19, and several subsequent tidelands decisions of this Court, held that the State possessed no proprietary rights in the seabed prior to enactment of the Act (Report, pp. 8–11). The Special Master further determined that the State's historic boundary did not, except in the area between the Marquesas Keys and the Tortugas Islands, lie substantially seaward of the line marking the outer limits of the State's Submerged Lands Act grant (Report, pp. 21–32, 32–36) and that the State, by constitutional amendment, has in any event relinquished its claim to the seabed seaward of those limits (Report, pp. 11–18). The Special Master therefore concluded generally that the State's rights in the resources of the seabed adjacent to its coast are limited to those conferred by the Act. The State excepts (Br. 7–31) to this conclusion and to the determinations on which it is based.

Previous litigation had left unresolved two important questions pertaining to the proper application of the Act to the particular circumstances of this case. (1) The seabed rights granted to the State by the Act extend three marine leagues into the Gulf of Mexico but only three geographic miles into the Atlantic Ocean; the Act, however, does not define the dividing line between those two bodies of water. The Special Master, accepting the views of geographers, cartographers, historians, and explorers, determined that the dividing line between the Atlantic Ocean and the Gulf of Mexico runs due north from Cuba to the Tortugas Islands and thence generally northeastwardly through the Florida Keys to the mainland (Report, pp. 18–21). The State excepts to this determination, contending (Br. 50–57) that the Atlantic Ocean ends at the southern terminus of Key Biscayne, and that all waters southwest of that point lie in the Gulf of Mexico. (2) The Special Master also fixed the State's coastline for purposes of the Act. The only coastline in dispute was that along the Gulf of Mexico between the Tortugas Islands and Cape Romano. The Special Master rejected the State's contention that the large body of water designated by the State as Florida Bay is an historic bay, but he determined that a small portion of those waters, lying to the east of a line running from the East Cape of Cape Sable to Knight Key, is a juridical bay under the Convention on the Territorial Sea and the Contiguous Zone; the Special Master determined that that juridical bay constitutes inland waters of the State and that the

seaward limit of those inland waters marks the State's coastline for purposes of the Act (Report, pp. 36–47, 52–54). The State excepts to the Special Master's finding that none of the waters constitute an historic bay (Br. 31–50); in the alternative, the State contends that the Special Master should have located the closing line of the juridical bay, and therefore the State's coastline, further west (Br. 57–58).

ARGUMENT

I

THE STATE'S RIGHTS IN THE RESOURCES OF THE SEABED ADJACENT TO ITS COASTS ARE LIMITED TO THOSE CONFERRED BY THE SUBMERGED LANDS ACT

A. THE STATE POSSESSED NO RIGHTS IN THE RESOURCES OF THE SEABED PRIOR TO THE ENACTMENT OF THE SUBMERGED LANDS ACT

Following the Civil War, the rebel States were readmitted to representation in Congress only upon congressional approval of their new constitutions. See Acts of March 2, 1867, 14 Stat. 428, and March 23, 1867, 15 Stat. 2. The new constitution of the State of Florida was approved by Act of June 25, 1868, 15 Stat. 73. Included in that constitution was a description of the State's boundary. Although, as we show below (pp. 8–16, *infra*), the State now exaggerates the seaward reach of that boundary, the Special Master found (Report, pp. 23–24), and we concede, that between the Tortugas Islands and the Marquesas Keys the State's 1868 boundary did in fact lie more than three geographic miles seaward of its coastline along the Atlantic Ocean and more than three marine leagues seaward of its coastline along the Gulf of Mexico. In

other words, in that area the State's historic boundary lay seaward of the line marking the outer limits of the State's Submerged Lands Act grant.

The State contends here (Br. 7–17) that in addition to the proprietary rights conferred by the Act it is also entitled to ownership of that portion of the seabed lying seaward of the three-mile or three-league belt conveyed by the Act but within the State's historic boundary. The State's theory is that congressional approval of its 1868 constitution effected a grant to it of proprietary rights in the seabed within that boundary.

This claim is essentially indistinguishable from that made by the State of California in *United States* v. *California,* 332 U.S. 19. California's 1849 constitution had fixed its boundary in the Pacific Ocean three miles seaward of the low-water mark, and that constitution was ratified upon California's subsequent admission to the Union. Act of September 9, 1850, 9 Stat. 452. This Court nevertheless concluded that the United States, and not California, was entitled to the natural resources of the seabed within that three-mile belt, reasoning that "national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward [of the low-water mark]" (332 U.S. at 36). This determination of the paramountcy of national rights in the offshore seabed was explicitly reaffirmed in *United States* v. *Louisiana,* 339 U.S. 699, 704, and *United States* v. *Texas,* 339 U.S. 707, 719. In all three cases those States, like Florida here, asserted historic maritime boundaries.

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But as the Court noted in its *Louisiana* decision (339 U.S. at 704):

> * * * [T]he issue in this class of litigation does not turn on title or ownership in the conventional sense. * * * Protection and control of the [marginal sea] are * * * functions of national external sovereignty. * * * The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

Moreover, the Court in those cases was not concerned merely with the three-mile marginal belt. Louisiana claimed a boundary 27 miles seaward of the low-water mark, and Texas claimed a boundary three marine leagues from shore. But the Court held that the nation's interests and rights did not terminate at the edge of the three-mile belt (*United States* v. *Louisiana, supra,* 339 U.S. at 705):

> * * * The matter of state boundaries has no bearing on the present problem. If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea.

These decisions require rejection of Florida's claim that mere congressional approval of its constitution effected an implicit grant of proprietary rights in the seabed within its historic boundary. Although such

approval "authorized [the State] to exercise local police power functions in the part of the marginal belt within its declared boundaries, these do not detract from the Federal Government's paramount rights in and power over this area." *United States* v. *California, supra,* 332 U.S. at 36.[1]

Moreover, the State has failed to adduce any evidence showing that Congress in 1868 made an express grant of proprietary seabed rights. Congressional approval of the constitutions of the formerly rebel States was required to ensure the establishment in each of those States of a republican form of government in conformity with the federal Constitution, including the Fourteenth Amendment. In the Act of June 25, 1868, Congress approved the constitutions of Florida and five other states, and it appears from the face of the Act that the concern of Congress was to ensure that the six states had "framed constitutions of State government which are republican." 15 Stat. 73. Congressional approval of Florida's 1868 constitution therefore indicated nothing more than Congress' considered judgment that the system of state government established thereunder complied with the federal Constitution. Of course, in making that judgment Congress also incidentally approved the State's constitutional boundaries. See *United States* v. *Florida, supra,* 363 U.S. at 128. But as the Special Master observed, "no language in either the Acts of 1867 or the Act of

[1] The State's general assertion (Br. 7–15) that the *California* decision does not apply here is without legal basis. This Court has expressly held that the underlying legal doctrine of the *California* decision survived enactment of the Submerged Lands Act and is applicable to all coastal States. See *United States* v. *Louisiana*, 363 U.S. 1, 6–7.

1868 even remotely suggest[s] that Congress by the Act of 1868 intended to make a grant to the State of the seabed within those boundaries or that it did in fact do so" (Report, p. 8).

Accordingly, the State had no proprietary rights in the seabed adjacent to its coasts prior to the enactment of the Submerged Lands Act, and the only rights it now possesses are those conferred by that Act.

B. THE SPECIAL MASTER CORRECTLY DETERMINED THE STATE'S HISTORIC BOUNDARY

The proper location of the State's historic boundary is relevant to this litigation only if this Court determines that the State possesses proprietary rights in the resources of the entire seabed landward of that boundary. If, as we have argued above (pp. 4–8, *supra*), the State's seabed rights derive solely from the Submerged Lands Act, the historic boundary is relevant only to the question whether the State qualifies for the maximum Submerged Lands Act grant of three marine leagues in the Gulf of Mexico. That question, however, is not at issue here; we concede that in the Gulf of Mexico, as defined by the Special Master (see pp. 19–20, *infra*), the State is entitled to the maximum three-league grant provided by Section 2(b) of the Act.[2] Thus if this Court agrees with the Special Master that the State's seabed rights derive solely from the Submerged Lands Act, it need

[2] If, however, this Court determines, contrary to the finding of the Special Master, that the large body of water designated by the State as Florida Bay constitutes an historic bay (see pp. 21–25, *infra*), the State would be entitled under the Act only to a three-mile grant seaward of the closing line of that bay, for the State does not claim an historic boundary seaward of that closing line.

not consider the actual extent of the State's historic boundary.

Furthermore, as we show below (pp. 16–19, *infra*), the State has amended its constitution to fix its boundary at the line that marks the outer limits of its Submerged Lands Act grant and therefore has abandoned any claim to ownership of the seabed seaward of those limits. But we now show that the Special Master in any event correctly determined that the State's historic boundary did not, except in the area between the Marquesas Keys and the Tortugas Islands, extend substantially beyond the outer limits of the State's grant under the Submerged Lands Act.

1. *The State's historic boundary on the Atlantic Ocean between St. Mary's River and the Lake Worth inlet ran along the coastline*

The State's eastern boundary under its 1868 constitution ran "down the middle of [St. Mary's River] to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream" (U.S. Ex. 6). This boundary call admittedly is logically incomplete. The description "down the middle of said river to the Atlantic Ocean" calls in plain terms for a boundary that stops at the margin of the ocean; similarly, the description "southeastwardly along the coast" calls for a boundary running along the coastline and not offshore. However, the Gulf Stream never touches the shore; the boundary must at some point leave the coastline in order to meet the Gulf Stream's edge. The problem confronting the Special Master was to determine where the constitutional draftsmen had intended the boundary to leave the shore.

The State's eastern coastline runs generally southeastwardly from St. Mary's River to a point approximately one mile north of the Lake Worth inlet, and then takes a general southwestwardly turn. The Special Master determined that the State's historic boundary left the coastline at that point and continued in a southeastwardly direction until it reached the western edge of the Gulf Stream, which in that area follows the 100-fathom contour parallel to and approximately three miles from the coast (Report, pp. 21–22).

The State contends (Br. 18–22) that the Special Master should have found that the boundary ran into the ocean out to the 10-fathom contour at the mouth of St. Mary's River, and then along the 10-fathom contour to a point east of the Lake Worth inlet, and then due east to the Gulf Stream at the 100-fathom contour.

We see no basis for construing the boundary as extending into the ocean at the mouth of St. Mary's River. The construction urged by the State is the same as that urged by the State of Louisiana, and rejected by this Court, in a virtually identical context. Louisiana's historic boundary ran "along the middle of the [Iberville River], and lakes Maurepas and Ponchartrain, to the Gulf of Mexico," and Louisiana contended that the boundary extended at that point into the Gulf of Mexico. This Court disagreed, noting succinctly that "[t]he boundary line is drawn * * * '*to* the Gulf of Mexico,' not *into* it * * *." *United States* v. *Louisiana*, 363 U.S. 1, 67 (emphasis in original). The same result is appropriate here: the boundary runs "*to* the Atlantic Ocean" and then

"along the coast," and this description is not compatible with a boundary running *into* the Atlantic Ocean and then along the 10-fathom contour.

Moreover, the State's contention is not even supported by its own evidence. The State's only witness on this point was an aviation navigator who testified that the boundary call "to the Atlantic Ocean" should be construed as describing a boundary extending into the ocean only so far as the last sea buoy off the mouth of St. Mary's River (Tr. 306); he conceded that this buoy was some 5 miles landward of the 10-fathom contour claimed by the State as its boundary (Tr. 574). The witness did not testify concerning the connecting link between the 10-fathom contour and the 100-fathom contour that is necessary under the State's theory.

We believe that the Special Master's determination of the State's eastern historic boundary is correct. It adheres to the literal meaning of the phrase "to the Atlantic Ocean" and "along the coast," and it complies with the call's "southeastwardly" directive.

2. *The State's historic boundary on the Gulf of Mexico ran along a line three marine leagues seaward of the coastline, with a southeastwardly connecting link between the Tortugas Islands and the Marquesas Keys*

The State's historic boundary in the Gulf of Mexico between the Tortugas Islands and the mainland is described in its 1868 constitution as running from the Tortugas "northeastwardly to a point three leagues from the mainland" (U.S. Ex. 6). The Special Master determined that this boundary ran along a line three marine leagues from the coastline, with a southeastwardly

connecting link from the Tortugas to the Marquesas Keys (Report, pp. 24–31). The State contends (Br. 22–28) that the boundary call instead describes a line running due northeast from the Tortugas to Cape Romano on the mainland—a contention that, if accepted, would result in the inclusion within the State's historic boundary "of a very large roughly semicircular area of comparatively deep water of the continental shelf in the Gulf of Mexico" (Report, p. 26).

The State's contention rests principally upon the mere claim that the call's "northeastwardly" directive necessarily requires a straight line running due northeast. That claim was fully and properly refuted by the Special Master (Report, pp. 25–26):

> * * * The term "northeastwardly" does not indicate a specific direction as may the more precise term "northeast". On the contrary, "northeastwardly" merely indicates a general direction which may be anywhere between north and east, depending upon other factors such as any relevant meets and bounding features which may be specified or implied. Here only one meet is specified, the Dry Tortugas Islands. The other end of this segment of the boundary, a "point three leagues from the mainland", is indefinite since it may be located at any place on the outer line of the three-league belt of marginal sea lying along the coast of the mainland. We must, therefore, look elsewhere for light on the intended location of this portion of the boundary.
>
> The State of Florida points to the physical fact that the western portion of the boundary contended for by the United States actually

runs southeastwardly rather than northeastwardly and does not take a northeasterly course until it reaches the vicinity of Boca Grande Key. This is quite true, but I do not believe that the term "northeastwardly", as here used, is to be given so restricted a meaning. On the contrary, as I have already suggested, I think it is intended to indicate merely the general direction of this section of the boundary taken as a whole. In this broad sense the line contended for by the United States does run northeastwardly. Both Cape Sable and Cape Romano, the termini contended for by the United States and the State, respectively, are in fact situated north and east of the point of beginning, the Dry Tortugas. A consideration of other language in the 1868 Constitutional boundary description fortifies this view. Thus the line along the Florida Reefs and to the Dry Tortugas is defined by the 1868 Constitution as running "southwestwardly" whereas the western end of the line actually runs northwestwardly. But the fact remains that the Dry Tortugas are in fact located south and west of Fowey Rocks so that the line connecting them may fairly be said in a general sense to run southwestwardly. Likewise the line defining the boundary along the Gulf coast of the mainland north of the area here under discussion is defined as running "northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river". A long section of this line runs northeastwardly and another section southwestwardly but the mouth of the Perdido river is unquestionably north and west of Cape Sable and Cape Romano and the line as a whole may, therefore,

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> fairly be described as running "northwestwardly." I am satisfied, therefore, that the use of the term "northeastwardly" does not eliminate the possibility of a boundary which in certain places deviates from that general direction so long as one terminal point is definitely north and east of the other.

We add only that if the State's constitutional framers had intended a straight line running due northeast, they could have easily described such a line. See p. 30 of the Report of the Special Master in *Michigan* v. *Ohio,* 410 U.S. 420 (No. 30, Original).

After concluding that a straight line running due northeast was not mandated by the 1868 constitution, the Special Master proceeded to consider the likely intent of the constitutional framers (Report, pp. 26–27):

> * * * [T]he great weight of the evidence before me, consisting of ancient documents received as exhibits and the testimony of expert witnesses, establishes, and I find, that in 1868 and prior thereto the interests of the State of Florida and its residents in this area were almost entirely limited to the taking of sponges, turtles and fish in the comparatively shallow waters, less than three fathoms deep, adjacent to the Keys and in the channels between them. It appears that in those days activities, other than shipping, in the area of deeper water to the North and West of the Keys were very minimal and the economic interests of southern Florida did not extend seaward into that area to any substantial extent. There is no evidence to indicate, and I do not believe, that the framers of the

1868 Constitution gave actual attention to this large area of the Gulf of Mexico or intended to include it within the State boundaries.

We submit that the Special Master properly evaluated the evidence on this point. See, *e.g.*, Tr. 114–130; U.S. Ex. 39, p. 4. Against this, the State offers little more than the fact that its expert witness *"suggest[ed]* that Floridians of the period were aware of resources in the deeper waters * * * and *conceivably* had an interest in claiming the area" (Br. 24; emphasis added). That "suggest[ion]" of a merely "conceivabl[e]" interest is not, of course, a sufficient basis for overturning the Special Master's finding, which is based upon the preponderance of the evidence. Moreover, the State's witness in fact conceded that as of 1868 only the shallow waters were of significant economic interest to the State (Tr. 515).

The United States had contended below that, in view of the fact that in 1868 the State would have been interested in claiming only the shallow waters near shore, the boundary should follow the three-fathom and five-fathom contours north of the Florida Keys. These contours lie within three marine leagues of shore throughout most of the disputed waters. The Special Master, however, concluded that the language of the boundary call, read in context, strongly suggests that the framers intended a three-league boundary (Report, pp. 27–28), and we now agree with that conclusion. Moreover, that reading appears to accord with this Court's previous understanding of the location of that boundary. See *United States* v. *Florida*,

supra, 363 U.S. at 129; *United States* v. *Louisiana*, *supra*, 364 U.S. at 503.

C. IN ANY EVENT, AFTER ENACTMENT OF THE SUBMERGED LANDS ACT, THE STATE RELINQUISHED ANY CLAIM TO THE SEABED SEAWARD OF ITS GRANT UNDER THAT ACT

In 1962, Florida amended its constitution in order to redefine its constitutional boundary. Insofar as is relevant to this litigation, the new boundary is described as running "down the middle of [St. Mary's River] to the Atlantic Ocean, and extending therein to a point three (3) geographic miles from the Florida coast line, meaning the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; thence southeastwardly following a line three (3) geographic miles distant from the Atlantic coast line of the state and three (3) leagues distant from the Gulf of Mexico coast line of the state to and around the Tortugas Islands; thence northeastwardly, three (3) leagues distant from the coast line, to a point three (3) leagues distant from the coast line of the mainland" (Report, p. 16). Under this amendment, the State's maritime boundary runs along the line marking the seaward limit of the State's Submerged Lands Act grant.

The Special Master properly determined that the effect of the 1962 amendment was to relinquish any claim of state ownership of the seabed lying seaward of the Submerged Lands Act grant (Report, pp. 17–18, 28–29). The State concedes (Br. 29) that the 1962 amendment purported to reduce its boundary,

at least in the Atlantic Ocean, but nevertheless contends (Br. 28–31) that the amendment was not effective because it has never expressly been approved by Congress.

It is clear that the States have authority to cede jurisdiction over areas within their boundaries to the United States. See, *e.g.*, *Petersen* v. *United States*, 191 F. 2d 154, 156 (C.A. 9), certiorari denied *sub nom. California* v. *United States*, 342 U.S. 885. Explicit congressional approval of such cessions is not necessary, for "[t]he acceptance by the United States at the time of the power ceded is presumed." *S.R.A., Inc.* v. *Minnesota*, 327 U.S. 558, 563. See also *Mason Co.* v. *Tax Commission*, 302 U.S. 186, 207; *Benson* v. *United States*, 146 U.S. 325, 330; *Fort Leavenworth R.R. Co.* v. *Lowe*, 114 U.S. 525, 528.

Since congressional approval is not required even when the cession of state jurisdiction imposes upon the federal government responsibility for exercising local police powers, that approval is *a fortiori* unnecessary in a case, such as this, where the State is not ceding jurisdiction but only relinquishing an adverse claim that had never been recognized by the federal government. Exclusive rights to the natural resources of the continental shelf have been claimed by the United States since the Truman Proclamation in 1945 (Presidential Proclamation No. 2667, 59 Stat. 884), and, in enacting the Submerged Lands Act, Congress confirmed that claim as to the seabed lying seaward of the three-mile and three-league limits prescribed therein. See *United States* v. *Louisiana*, *supra*, 363

U.S. at 6–7. That confirmation of federal ownership constituted ample congressional approval, if any were needed, of any subsequent relinquishment of an adverse state claim.

But the State apparently contends that even if it has authority unilaterally to relinquish a claim of seabed ownership, it has no similar authority to reduce its boundary, and that the 1962 constitutional amendment is ineffective insofar as it purports to reduce the State's maritime boundary. But whatever the pertinent considerations may be in other circumstances, there is no apparent legal obstacle to a State's unilateral reduction of its constitutional maritime boundary to or toward the three-mile line recognized by the federal government, in the conduct of its foreign affairs, as the seaward limit of the territorial sea.[3] In pending litigation, the United States has taken the position that coastal states have no right to exercise jurisdiction and control over fishing by foreign vessels and their crews beyond the territorial sea. *United States* v. *Florida and Texas,* No. 54, Original. Thus the United States has an affirmative interest in the relinquishment or nonassertion of state jurisdiction over the high seas and would welcome the voluntary withdrawal of state boundaries back to the three-mile line. Moreover, such unilateral state action would neither infringe upon the interests of other States nor conflict with any known national interest. It there-

[3] For a discussion of the United States' position with respect to the territorial sea, see 4 Whiteman, *Digest of International Law* 14–137 (1965).

fore seems clear that no practical purpose would be served by requiring congressional consent to or approval of the State's 1962 constitutional amendment as a condition of its effectiveness, and we see no legal basis for denying that amendment full force and effect.

II

THE SPECIAL MASTER PROPERLY DETERMINED THE DIVIDING LINE BETWEEN THE ATLANTIC OCEAN AND THE GULF OF MEXICO FOR PURPOSES OF THE SUBMERGED LANDS ACT

The Submerged Lands Act grants the State seabed rights extending three marine leagues into the Gulf of Mexico but only three geographic miles into the Atlantic Ocean, without precisely defining the line dividing those two contiguous bodies of water. The Special Master determined, in an opinion (Report, pp. 18–21) on which we primarily rely, that Congress intended and understood the dividing line to run due north from Cuba to the Tortugas Islands, and thence generally northeastwardly through the Florida Keys to the mainland. That line is the one formulated by the International Hydrographic Bureau and adhered to by geographers and cartographers. See Tr. 149; U.S. Ex. 63. It is also the line that historians, explorers, and other authors have long referred to as the maritime border between the two seas. See U.S. Exs. 51–53, 69.

The State urges (Br. 50–57) that the Special Master ignored "overwhelming evidence" (Br. 51) that the Straits of Florida—the waters lying to the north of Cuba and to the south of the Florida Keys and

mainland—are part of the Gulf of Mexico; according to the State, the Atlantic Ocean ends at the southern terminus of Key Biscayne. But the only evidence of substance presented by the State related to the views of marine geologists concerning the topography of the sea floor and the morphology of the coast. Since those views evolved from bathymetric and other findings made long after enactment of the Submerged Lands Act (see Tr. 472), they can shed no light upon the congressional intent. The Special Master's determination reflects the reasonable judgment that Congress contemplated and intended the dividing line designated and internationally agreed upon by geographers, cartographers, and historians at the time of enactment.

But even if, contrary to accepted canons of statutory interpretation, the statutory dividing line is to be fixed in accordance with current knowledge and opinion, rather than that prevailing at the time of enactment, the line fixed by the Special Master is nevertheless proper. Although the findings of marine geologists have undoubted scientific interest and value, those findings have not persuaded geographers and cartographers to withdraw their designation of the Straits of Florida as an arm of the Atlantic Ocean for map-making and other geographic purposes. See Tr. 149; U.S. Ex. 63. It is, of course, maps and geographic writings which supply the basis for the generally understood meanings of the terms "Atlantic Ocean" and "Gulf of Mexico", and it is to that common understanding that the nontechnical phrasing of the statute appeals.

III

THE STATE POSSESSES NO SUBSTANTIAL INLAND WATERS BETWEEN THE TORTUGAS ISLANDS AND CAPE ROMANO

The seabed rights granted by the Submerged Lands Act are measured seaward from the "coast line", which Section 2(c) of the Act defines as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The State claims (Br. 31–50) that a line running due northeast from the Tortugas Islands to Cape Romano marks the "seaward limit of [its] inland waters," on the theory that the waters lying east of that line, between the mainland and the Florida Keys, comprise an historic bay. Alternatively, the State claims (Br. 57–58) that the seaward limit of its inland waters in that area is marked by a line drawn from the Spanish Banks low-tide elevation, two miles northeast of Big Spanish Key, to the East Cape of Cape Sable, on the theory that the waters lying east of that line comprise a juridical bay. As we now show, both claims are insubstantial.

A. THE WATERS LYING EAST OF A STRAIGHT LINE RUNNING FROM THE TORTUGAS ISLANDS TO CAPE ROMANO DO NOT COMPRISE AN HISTORIC BAY

The Special Master correctly determined that the State, in order to prove the existence of an historic bay, must show (1) that it has exercised an open, notorious, and effective sovereign authority over the waters of the bay, not merely with respect to local citizens but as against foreign nationals as well, (2)

that this authority has been exercised for a considerable period of time, and (3) that foreign nations have acquiesced in this exercise of authority (Report, p. 41). See *United States* v. *California*, 381 U.S. 139, 172; *United States* v. *Louisiana*, 394 U.S. 11, 23–24, n. 27. The State has failed to make either of these required showings with respect to the area in question.

We review each of the State's arguments in turn. First, although it is not dispositive of the State's claim, it is significant that the State has failed to establish that the waters here in question even constitute an historically identifiable area. Although the State attempts to show (Br. 37–39) that the area in question has long been designated "Florida Bay," the United States established that that designation was shown on no maps prior to 1868 (Tr. 136) and was unknown to explorers prior to the 1850's (Tr. 141), that the name "Florida Bay" is omitted from the charts and text of a comprehensive history of the State written by one of the State's principal witnesses (Tr. 512–513), and that once that name came into popular use it referred only to the waters east of "an imaginary line drawn from East Cape, on Cape Sable, southward to Vaca Key" (Tr. 144; U.S. Ex. 54), *i.e.*, to a body of water considerably smaller than that claimed by the State in this litigation.[4] These con-

[4] Moreover, the area claimed by the State as an historic bay is not a true geographic bay, for it is formed not by an indentation in the mainland but rather by the mainland and a string of islands, between some of which there are wide, navigable water gaps (Tr. 145–146).

siderations reinforce the Special Master's conclusion (Report, pp. 24–31; and see pp. 11–16, *supra*) that the State's 1868 constitution did not include the area now referred to by the State as "Florida Bay" within the State's historic boundary. There has, therefore, been no historic claim to these waters.

The State next asserts (Br. 40), without any attempt at proof, that the area here in question was ceded to the United States by Spain in 1821; there is no evidence that these waters were either possessed by Spain or ever ceded by her to the United States. The State also relies (*ibid.*) upon federal action in arresting foreign turtlers in unspecified Florida waters during the 1820's; the evidence shows, however, that turtling at that time was conducted in the shallow waters near the shore, not in the comparatively deep waters claimed by the State (U.S. Ex. 39, p. 4).

As evidence of foreign acquiescence, the State offers only an 1831 British request "for permission to allow English fishermen to fish in Florida waters" (Br. 40). However, the State's own witness was unable to show that this or any other such request by a foreign government referred to the waters here in question (Tr. 482–486). Moreover, during the 1830's the State claimed exclusive fishing rights only within a cannon shot, or three miles, of shore (Fla. Ex. 76, p. 4), so that the British request—and also the fisheries act enacted by the Florida legislature in response to that request (Br. 42)—evidently concerned only waters within the three-mile territorial sea. Similarly, there is no evidence that the State's various other fisheries

acts (Br. 42–43, 44–46) were intended to regulate fishing beyond three miles or, at most, three leagues of shore. And the fact that military fortifications were constructed on shore (Br. 43–44) clearly has no relevance to the State's claim here.

Although the State now asserts (Br. 46–48) that its current fisheries legislation applies to the entire body of water that it claims as an historic bay, the State's own witness—the Executive Director of the Florida Department of Natural Resources—conceded that this position was first taken by the State in 1968, and that prior to that time the State had asserted fisheries jurisdiction only within three leagues of shore (Tr. 548–549). He also testified that the State had never seized any foreign vessel more than three leagues from shore (Tr. 551). Moreover, the State's expert witness on the history of the State testified that he knew of no historical evidence of any effort by the State to exclude foreign fishing vessels from the expanded area it now claims (Tr. 510–511).

The only other evidence submitted by the State (Br. 48–49) pertained to offshore leases in the disputed area granted by the State to certain private individuals in 1944, 1949, and 1951, the last of which expired in 1964. The Special Master properly evaluated this evidence by observing (Report, p. 46):

> * * *[T]he leases were given only nine years, at the earliest, before the enactment of the Submerged Lands Act and * * * [therefore] do not disclose a usage sufficiently remote in time * * *. Nor do I think that they afford evidence of a use adverse to foreign nations in

> light of the accepted view in recent years that maritime nations have special rights in the bed of the continental shelf off their coasts.

Moreover, the United States has distributed to foreign governments, in response to their requests, maps showing that the disputed waters lie outside the United States' territorial sea (see U.S. Exs. 101, 102, 103, and 104) and from before enactment of the Submerged Lands Act has affirmatively disclaimed any title to the waters in question as an historic bay (see U.S. Exs. 97, 105, and 106). In view of this consistent history of federal disclaimer, the State bore the heavy burden of proving beyond a reasonable doubt that it had traditionally exercised sovereign authority over the disputed waters, and that foreign governments had acquiesced in that exercise of authority. See *United States* v. *California, supra,* 381 U.S. at 175; *United States* v. *Louisiana, supra,* 394 U.S. at 77. The Special Master correctly concluded that the State failed to carry that burden.

B. THE WATERS LYING EAST OF A STRAIGHT LINE RUNNING FROM THE SPANISH BANKS LOW-TIDE ELEVATION TO THE EAST CAPE OF CAPE SABLE DO NOT COMPRISE A JURIDICAL BAY

The Special Master determined that the waters lying east of a straight line running from Knight Key to the East Cape of Cape Sable comprise a juridical bay under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Part 2) 1606, and therefore that the line constitutes the seaward limit of internal waters. The State agrees that a juridical bay exists but contends (Br. 57–58) that

the southern terminus of its closing line is further west, at the Spanish Banks low-tide elevation two miles northeast of Big Spanish Key.

We have shown, at pages 7 through 15 of our brief in support of the United States' exceptions, that the Special Master erred in finding a juridical bay. We undertake to show here only that, assuming *arguendo* the existence of such a bay, the closing line proposed by the State is nevertheless inappropriate.

The theory on which the Special Master apparently proceeded in finding a juridical bay was that the Florida Keys out to Knight Key are "so closely aligned with the mainland as to be deemed a part of it." *United States* v. *Louisiana, supra,* 394 U.S. at 67, n. 88. In the proceedings before the Special Master the State did not urge the closing line it now proposes. The Special Master nevertheless considered and rejected that closing line "because of the existence of a gap in the chain of the Keys just west of Knight Key, through which gap passes the Moser Channel between the Straits of Florida and the Gulf of Mexico with navigable depths of water of from 10 to 15 feet [;] * * * this navigable channel so far separates the lower Florida Keys from the upper Keys as to negate a finding that the former should be regarded as a further extension of the mainland" (Report, p. 47).

The State's position here apparently is that since a federal highway runs from the mainland to Key West, and "ocean-going vessels" (Br. 58) cannot navigate Moser Channel, the entire chain of Keys extending westward to Key West may be treated as

part of the mainland for purposes of establishing a juridical bay under Article 7 of the Convention. The United States, by limiting its territorial sea in this area to a three-mile belt measured from the natural shoreline (U.S. Ex. 101), has, in its dealings with foreign nations, implicitly rejected the State's argument with respect to the significance of highway bridges. Moreover, this Court has held that it is the geographic relationship of an island to the mainland, not the presence or absence of highway bridges, that determines whether the island may be considered part of the mainland under the Convention (*United States* v. *Louisiana, supra,* 394 U.S. at 66):

> * * * whether a particular island is to be treated as part of the mainland would depend on such factors as its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast.

The islands west of Knight Key cannot be considered part of the mainland under these criteria. As the State concedes (Br. 58), the most seaward of those islands, Key West, is over 100 highway miles from the mainland; and a water gap of more than 5 miles separates Bahia Key, the easternmost of the lower Keys, from Knight Key, the westernmost of the upper Keys. These distances are far too great to permit the lower Florida Keys to be realistically considered part of the mainland. Cf. *United States* v. *Louisiana, supra,* 394 U.S. at 66–67. Similarly, the water channels west of Knight Key, although not deep enough to accom-

modate truly large vessels, are nevertheless navigable by ocean-going fishing vessels; those channels therefore are of sufficient international significance to foreclose treatment of outlying islands as part of the mainland. Finally, the Keys constitute a fringe of islands projecting dramatically away from the mainland coast; their "relationship to the configuration or curvature of the coast" precludes their being considered part of the mainland.

But the closing line proposed by the State is in any event improper, even if the State is otherwise correct in its contention that islands linked to the mainland by a highway may realistically be considered part of the mainland for purposes of Article 7. The maximum closing line permitted by that Article is 24 miles, and the highway upon which the State relies does not pass through any island west of Knight Key from which a 24-mile closing line may be drawn. In an attempt to overcome this difficulty, the State has designated, as the headland of its proposed juridical bay, a low-tide elevation that lies two miles offshore from the nearest true island and more than three miles from the nearest island crossed by the highway. We have serious doubts whether a low-tide elevation may properly be considered the headland of a juridical bay. Cf. Article 4(3) of the Convention, prohibiting the construction of straight baselines to or from low-tide elevations. In any event, the comparatively isolated low-tide elevation chosen by the State in this case is not "so closely aligned with the mainland as to be deemed a part of it"; nor can it realistically be con-

sidered part of the chain of islands that are connected to the mainland by the highway. It cannot, therefore, properly be treated as the headland of a juridical bay. See *United States* v. *Louisiana, supra,* 394 U.S. at 60–66; see also pages 11 and 12 of our brief in support of the United States' exceptions. Indeed, there is no island or low-tide elevation west of Knight Key from which a satisfactory closing line could be drawn under Article 7. See page 10, note 3, of our brief in support of the United States' exceptions.

CONCLUSION

For the foregoing reasons, the State's exceptions to the Report of the Special Master should be overruled.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
WALLACE H. JOHNSON,
Assistant Attorney General.
KEITH A. JONES,
Assistant to the Solicitor General.
BRUCE C. RASHKOW,
MICHAEL W. REED,
Attorneys.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 52, Original

UNITED STATES OF AMERICA,
Plaintiff,

-v-

STATE OF FLORIDA,
Defendant

Florida's Response to Exceptions of the United States to the Report of the Special Master

ROBERT L. SHEVIN
Attorney General

DANIEL S. DEARING
Chief Trial Counsel

725 So. Calhoun Street
Tallahassee, Florida 32304

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1968

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-vs-

STATE OF FLORIDA,
Defendant.

Florida's Response to Exceptions of the United States to the Report of the Special Master

STATEMENT

The United States' exceptions to the Report of the Special Master question (a) his conclusion that waters east of a straight line between the East Cape of Cape Sable and Knight Key comprise a juridical bay and are inland waters of the State of Florida, and (b) his finding that narrow waters within each of three groups of islands in the lower Florida Keys are inland waters of the State of Florida.

The first objection is based solely upon foreign policy considerations, and the second is like unto it, but with added emphasis upon Federal priorities in establishing baselines to enclose archipelagoes.

Neither exception takes cognizance of the constitutional question presented by the Master's Report. Both exceptions candidly concede that the result reached by the Master is of little significance as a practical matter in treating with the subject geography since there is small moment in whether Florida's historic boundaries are measured from closing lines of a juridical bay or from the natural shorelines involved (U. S.

Exceptions, pg. 7), or whether the "island groups" involved are enclosed as determined by the Master or as determined using natural shorelines (U. S. Exceptions, p. 16). Neither Exception, admits the United States, substantially affects disposition of seabed rights in the case.

Yet, for reasons of a "larger international significance" (U. S. Exceptions, p. 7), and the unique "archipelagic principle involved" (U. S. Exceptions, p. 19), the United States urges that the Master be disregarded on these two points. Because Florida's historic boundaries and the Master's treatment of them give rise to some embarrassment in the conduct of foreign affairs (U. S. Exceptions, p. 18), Plaintiff insists that the Court must set the boundaries back.

As far as the United States is concerned, foreign affairs is the consideration *ne plus ultra*. This consideration is followed closely by concern for "national security" and "commercial shipping interests", in that order (U. S. Exception pp. 18-19).

Rights asserted by ten million citizens of the State of Florida based upon their historic concept of the geographical unit the United States Congress recognized and approved Florida to be, and other questions of the nature of State-National relations, are omitted from concern expressed by the United States and are conspicuous by their absence. In the name of foreign affairs, the National Government wants all or nothing from the Special Master. And, indeed, it appears on close consideration of the Report and United States' Exceptions to it, that the Special Master gave it all to them.

But, in the process, a couple of things were overlooked, both by the United States and by the Special Master. Their consideration, if considered at all, must affect conclusions of fact upon which the United States' arguments are advanced, and, consequentially, conclusions upon which the Special Master relied. These facts are discussed here for the first time, with permission of the United States obtained in advance.

RESPONSE

Florida's Response to Exceptions of the United States is, essentially, two-fold:

(a) That the juridical bay objection is well-founded, but for wrong reasons: Florida Bay, is, as previously pointed out, an historic bay. The United States and the Special Master have overlooked open acts of dominion exerted by both State and Federal authorities, and have consistently but erroneously maintained that there has been no recognition of Florida primacy by a foreign government, and

(b) That the "foreign affairs" premise for objections noted is a *non sequitur*, for the United States has no authority in the conduct of foreign affairs to bargain away the territory of a State.

I.

FLORIDA BAY IS AN HISTORIC BAY – THE BURDEN OF PROOF IMPOSED BY THE SPECIAL MASTER WAS INAPPROPRIATE.

> *"During the questioning by Senator Long, Mr. Dean made it clear that the Conventions do not affect the relative rights as between the several States of the United States and the Federal Government. The Conventions only affect the rights of the United States as a soverign state with respect to the rights of other sovereign states."*[1]

> *"In the Constitution the term "state" most frequently expressed the combined idea . . . of people, territory and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written Constitution, and established by the consent of the governed."*[2]

In its opening sentence of Argument, the United States describes two essential differences between positions of the parties here. (U. S. Exceptions, p. 7; emphasis supplied):

[1]Summary of testimony of Mr. Arthur H. Dean, Special Consultant to the Department of State, who was Chief of the U. S. Delegation at the negotiations in Geneva which resulted in the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas; from Congressional Record-Senate, April 26, 1960, pg. 11191.

[2]Chief Justice Chase speaking for the Court in *Texas* vs. *White*, 7 Wall. (U.S.) 700 at p. 721 (1868).

The determination whether Florida Bay is a juridical bay constituting inland waters of the State of Florida *has little importance to the final determination of the respective seabed rights* of the United States and the State *under the Submerged Lands Act.*

1.

First, a determination of the status of Florida Bay as *juridical* is, by definition, a crucial limitation upon territory, and hence, initial sovereignty over the area. To suggest that such a determination has "little importance" to respective rights involved is to ignore the core issue.

Florida's position is that Florida Bay, delimited in the State's 1868 Constitution, is an *historic* bay; not a *juridical* bay. Therefore, the limitations attendant to juridical bays (i.e., 24-mile closing lines, well-marked coastal indentations, land-locked waters, and other limitations discussed in the Master's Report, pp. 36-47 and in the United States' Exceptions, pp. 7-15) should not be imposed upon State territory here considered (See Florida Exceptions, pp. 31-57).

The Master's characterization of Florida Bay as something less than an historic bay is, to a large extent, what this case is about. To insist that Florida Bay lacks credentials of historical status is to flatly deny more than 100 years of history.

The United States relies confidently upon the Master's finding (at p. 42 of the Report) that since the United States has itself disclaimed sovereign jurisdiction over the area, the State of Florida was obliged to establish by historic evidence "clear beyond doubt" that its historic claims met the three criteria set by the Master (at p. 41 of the Report). The United States, further, relies strongly upon the Master's Conclusion (at p. 46 of the Report) that since Florida failed to come forward and present evidence "clear beyond doubt", its claim to Florida Bay as an historic bay must be denied. Taking as a foregone conclusion, in view of the Report, that Florida Bay is not what Florida urges it to be (which it is), but is, as a matter of law, that which the Master says that it is (which it isn't), the United States attacks the Master's conclusion that it is a juridical bay,

and ignores the Master's errors in avoiding the historic nature of the place. And the United States does it all in the name of foreign affairs.

> In the conduct of its foreign affairs, the United States treats the waters of Florida Bay as territorial seas or international waters. (U. S. Exceptions, p. 7).

It treats as territorial seas, according to its Exceptions and previous arguments to the Master, only three miles measured from mainland islands and certain low-tide elevations along the Bay (U. S. Exceptions, p. 7). The rest of Florida Bay it treats, ostensibly, as high seas.

> ***Approval of the Special Master's determination of the existence of a juridical bay would extend the United States' claim unto *waters previously treated as high seas*, and it would imply adoption by the United States of a principle permitting one side of a bay to be formed by a chain of islands. (U. S. Exceptions, p. 8; emphasis supplied.)

It was this assertion, that the United States had neither exercised nor claimed any dominion in Florida Bay, that prompted the Master to apply the California II Rule[3] subjecting Florida to the "clear beyond doubt" test.

In the present case, the United States takes the position that it has disclaimed any historic title to or sovereign jurisdiction over the extensive area which the State of Florida claims as Florida Bay.

> In *United States* vs. *California* ... the disclaimer of the United States in the litigation itself was held sufficient to bar the state claim. Here there is not only disclaimer in the litigation but additional evidence of activities and statements by officials of the United States of continued disclaimers of historic title to the waters in question.

[3] *United States* v. *California*, 381 U.S. 139 at 175 (1965) "We are reluctant to hold that such a disclaimer [of the United States] would be decisive in all circumstances, for a case might arise in which the historic evidence was clear beyond doubt. But, in the case before us, with its questionable evidence of continuous and exclusive assertions of dominion over the disputed waters, we think the disclaimer decisive.

> ***The State must show that it, *or the United States*, exercised open, notorious, and effective sovereign authority in the area as against the nationals of foreign states and that the foreign states acquiesced in this exercise of authority. As to this, the evidence submitted by the State is limited indeed. *There is no evidence whatever that the federal government either claimed or exercised such authority over the area beyond the Coastal belt of territorial sea* recognized by maritime states. (Report, pp. 42-43; emphasis supplied).

Neither the United States, in making such averments, nor the Special Master, in relying thereon, considered carefully all the evidence before them. Nor, it is admitted, did Florida make the point which is so amplified by the Master's Report. But the Court's attention is respectfully invited to Florida's Exhibit #168, a Coastal & Geodetic Survey chart of the Florida Keys showing the mainland, the Keys running out to and including the Tortugas, and a straight line added to the printed chart plotted at an angle of 045° from the Tortugas to Cape Romano back on the mainland. The area claimed as an historic bay is clearly shown.

In Florida Bay, two rectangular boxes are described. One, the smaller one, for which the chart was submitted as evidence of an area under a state-granted oil drilling lease, is marked by heavy lines drawn on the chart for that purpose and lies adjacent to the Tortugas-Romano line at the top of the triangular-shaped Bay. The other, overlooked by the parties, and apparently by the Master, is printed on the chart in lighter, broken lines. It is considerably larger than the former, and could be said to dominate the central, navigable area of Florida Bay. It is marked, rather clearly, in the center of the rectangle: "DANGER AREA (see note)." The "Note", also shown on the Exhibit, is clear and unambiguous. It reads:

> DANGER AREA
>
> The area within the following limits is not to be entered without U.S. Naval authority. Between parallels 24° 36′ N, 25° 10′ N. Between meridians 81° 23′ W, 82° 10′ W.

At page 43 of his Report, the Master observed:

> The most common exercise of sovereignty in inland waters is the special control and, often, prohibition of navigation by

foreign vessels and of fishing by foreign nationals. The State of Florida offered no evidence that either it or the federal government had ever attempted to control or prohibit the mere navigation by foreign vessels of the area in question.

It would seem that a Danger Area so marked upon a navigation chart appearing on Florida's Exhibit #168, showing an area of Florida Bay of approximately 1,900 square miles closed to navigation without prior permission of the United States Navy, would indicate a "common exercise of sovereignty", clearly within the Special Master's own definition. Moreover, it patently refutes the United States' claim throughout these proceedings (stated unequivocally on page 8 of its Exceptions) that it treats these waters as high seas. This claim, it is respectfully submitted, is erroneous. For authority to so designate danger areas, 33 U.S.C. § 3, limits such regulation to "navigable waters of the United States or waters under the jurisdiction of the United States . . ."

The Court's attention is respectfully invited to the Appendix where recent correspondence between the State and Department of the Army is reproduced together with appropriate danger zone regulations which are self-explanatory. Of particular relevance is the area described under Regulation 204.85c shown on the chart at Appendix 17 supplied by the Department of the Army.

Whether this apparent exercise by the National Government of dominion over a substantial part of Florida Bay indicates a reliance on Florida's historic claim to the area, or whether it is based upon some other unannounced authority, is not material to the issue at this point. But the fact of this act of dominion *is* material to the United States' assertion that it has historically treated the area as high seas, and it should be of some significance to the question of whether the Special Master's denial of the historical bay status should be accepted by this Court, overruled by this Court, or resubmitted to the Master for further consideration.

Since the Federal Government *has*, in fact, asserted dominion in Florida Bay, the "clear beyond doubt" test of evidence to which the Master held Florida in presenting its case must be ruled in error.

In its Exceptions, the United States challenges the Master's conclusion that Florida Bay is a juridical bay for reason that such result would be contrary to foreign policy. Florida challenges the Master's juridical bay determination for reason that such result would be contrary to and an arbitrary limitation upon the area's nature as an historical bay.

2.

Accepting the criteria for approving historic bays announced by this Court in *United States* vs. *California*, 381 U.S. 139 at 172 (1965), to be "bays over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations", or the even more restrictive criteria demanded by the Special Master (Report, p. 41), Florida's position is not without support.

The Master determined the 1868 Constitution to have been remote enough in time to satisfy his second criterion: that the exercise of authority over the area have continued for a considerable period, but refused to accept Florida's construction of the boundary language contained in that Constitution, contending that (a) the directional call "thence northeastwardly to a point three leagues from the mainland" does not mean what it says (Report pp. 24-26); (b) the boundary line set at 045° from a point three leagues north of the Tortugas straight across the Bay of Florida to a point three leagues from Cape Romano asserted by the State of Florida would encompass an area of comparatively deep water deemed by the United States to be a high seas region in which no dominion had been asserted, either by the United States or Florida (Report, pp. 26-27); and (c) the opinion of this Court in No. 9 Original (363 U.S. 121) and the decree entered in that case (364 U.S. 502), by construing the Submerged Lands Act as a limitation upon Florida's historic boundary claim, effectively adjudicated the issue of Florida Bay.

Assuming that the Master's principle objections to Florida's claim can be overcome by reconsideration of evidence indicating open acts of dominion by the United States (as discussed under Part 1, above), we turn to another primary difficulty expressed

by the Master in his consideration of Florida Bay as historic inland waters:

> [F]oreign states must have acquiesced in the exercise of this authority as against their nationals. (Report, p. 41)

> The State must show that it, or the United States, exercised open, notorious and effective sovereign authority in the area as against the nationals of foreign states *and that the foreign states acquiesced in this exercise of authority.* (Report, pp. 42-43, emphasis supplied.)

As to whether the State exercised open authority over the area of Florida Bay claimed, and whether foreign states acquiesced in such exercise of authority, the Master commented, at p. 43:

> As to this, the evidence submitted by the State is limited indeed.

There then followed a recitation of evidence offered by Florida to describe its exercise of open authority, most of which is treated with less than enthusiastic approval by the Special Master, and dismissed as inappropriate for reasons indicated. As regards Chapter 57-358, Laws of Florida, 1957, however, the Master had no comment. (Report pp. 44-45). But, while the Master was indifferent to Florida's 1957 legislation, the Executive Department and Senate of the United States were not so silent, at least on the subject matter of the Act: the Tortugas shrimp beds.

From 1950 to 1956, the area of Florida Bay, the Gulf of Mexico and Straits of Florida known as the Tortugas shrimp beds yielded $38 million worth of shrimp to fishermen, most of whom operated out of Florida and Cuban ports. After indications in 1955 that a large proportion of the shrimp catch was undersized, the State of Florida acted unilaterally to conserve resources in the Tortugas beds by passing Chapter 57-358, Laws of Florida, 1957. (At that time, the legislature met biannually. It may be said, therefore, that the conservation area was established as quickly as possible after the need for such measures became known.)

The 1957 Act defined the Tortugas shrimp beds as follows (§ 370.151(2), Florida Statutes, 1957):

> Beginning at the intersection of the Florida boundary line in the Straits of Florida with the meridian longitude 82°00′ West of Greenwich; running thence westerly along said Florida boundary line in the Straits of Florida to the meridian longitude 82°35′ West of Greenwich; running thence due North along said meridian longitude 82°35′ to its intersection with the Florida boundary line in the Gulf of Mexico, which is a straight line drawn from the island of Dry Tortugas on a bearing of 75° from magnetic north; running thence easterly along said Florida boundary line to its intersection with said meridian longitude 82°00′; running thence Southerly along said meridian longitude 82°00′ to the point of beginning.

The Act gave the Director of the State Department of Conservation discretionary authority to close the shrimp beds to vessels flying the American flag. The Act was subsequently amended to increase the size of the Tortugas shrimp beds to an area almost co-extensive with Florida Bay (§ 370.151, Florida Statutes, 1961). Enforcement activity under the legislation is described, in part, in Justice Ervin's dissent in *Bateman* vs. *State*, 238 So.2d 621 at 626-633 (1970).

Seeking Cuban cooperation to protect these shrimp conservation areas, industry spokesmen sought and obtained intergovernmental conferences involving officials of the Department of State, Department of Interior, State of Florida, and other interested groups. Negotiations between the governments of Cuba and the United States followed. A convention was drafted. Florida state legislative and conservation officials were consulted. They gave their concurrence to the convention.

President Eisenhower transmitted the Convention to the Senate for its advice and consent March 5, 1959. (Department of State Bulletin, April 26, 1959). Senator Fulbright moved the Senate's advice and consent to ratification. (Congressional Record – Senate, June 4, 1959, page 9846). The following extract is from his statement to the Senate; emphasis supplied:

> The Committee on Foreign Relations heard testimony from representatives of the Departments of State and Interior, and

> received written statements of support from four organizations representing business interests in six Southern States. It was noted that Florida State legislative and conservation officials were consulted and gave their concurrence on the convention. The Committee further noted that Cuba had promptly ratified the convention, *and had carefully observed a "gentlemen's agreement" regarding Florida's regulations pending ratification by the United States.*

Ratification was advised by the Senate on June 4, 1959. The convention was ratified by President Eisenhower June 12, 1959; by Cuba July 29, 1959; and the ratifications were exchanged September 4, 1959, making the treaty effective and in force as of that date. It was proclaimed by the President September 16, 1959 (10 U.S.T. 1703).

The fact of the convention is not, of course, controlling. But, the statement by Senator Fulbright that the Cuban government "carefully observed a 'gentlemen's agreement' regarding Florida regulations" is material to the issue as to whether a foreign state recognized Florida's assertion of authority in the area described by its 1868 Constitution as inland waters of the State.

Under the circumstances described by evidence of (a) United States' acts of dominion in closing vast areas of Florida Bay to navigation; (b) Florida's shrimp conservation regulations in the area (to say nothing of mineral leasing and other acts of sovereignty presented to the Master earlier in these proceedings); and (c) Cuba's acknowledgment of Florida's regulatory authority, it is respectfully submitted that this Court, in the exercise of its equity powers in cases of original jurisdiction [*Ohio* vs. *Kentucky*, 410 U.S. 641 (1973); *Rhode Island* vs. *Massachusetts*, 14 Pet. (U.S. 210 (1840)] should remand this cause to the Master for consideration of the evidence in light of a lesser burden of proof to be imposed upon the State of Florida in establishing its inland sea boundaries as defined in the 1868 Constitution.

The "clear beyond doubt" test required by the Rule of *United States* vs. *California*, 381 U.S. 139 (1965), was clearly misapplied in the instant proceedings.

3.

The second point of difference between the parties which is described in the opening sentence of the United States' Argument (U.S. Exceptions, p. 7), is the Plaintiff's apparent reliance upon the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. § 1301-1315, as a controlling limitation upon the territory that is the State of Florida. The Act is not controlling (a) by its terms, and (b) because the Congress has no power to divest a State of its territory once that territory has been approved (i) in its admission Constitution, or (ii) by law subsequent to its admission.

In *United States* vs. *Florida*, 363 U.S. 121 (1960), this Court discussed the matter, treating the Submerged Lands Act not so much as a *grant of territory* as the grant of an opportunity to prove historic boundaries; not so much a conveyance of new land to the State as it was the *chance to demonstrate* that the geographical unit that comprises the territory of the State of Florida does not stop at the shoreline.

The suit was cast in terms of limited definition: whether Florida could prove historic boundaries three marine leagues seaward of her beaches in the Gulf of Mexico.

> ***The language of the Submerged Lands Act was at least in part designed to give Florida an opportunity to prove its right to adjacent submerged lands so as to remedy what the Congress evidently felt had been an injustice to Florida. Upon proof that Florida's claims met the statutory standard – "boundaries. . . . heretofore approved by the Congress" – the Act was intended to "confirm" and "restore" the three-league ownership Florida had claimed as its own so long and which claim this Court had in effect rejected in *United States* v. *Texas*, 339 U.S. 707; *United States* v. *Louisiana*, 339 U.S. 699; and *United States* v. *California*. As previously shown, Congress in 1868 did approve Florida's claim to a boundary three leagues from its shores.*** (363 U.S. at 128)

The separate concurring opinion by Mr. Justice Frankfurter adds emphasis:

> The one thing which I take to be incontestable is that Congress did not, by the Submerged Lands Act of 1953,

> make an outright grant to any of the Gulf States in excess of three miles. Congress only granted to each of these States the opportunity to establish at law that it possessed a boundary in excess of three miles, either by virtue of possession of such a boundary at the time of its admission to the Union or by virtue of Congressional "approval" of such a boundary prior to the enactment of the Submerged Lands Act.*** (363 U.S. at 129-310)

Thus, the controlling question is not whether Congress granted Florida a seaward boundary in the Submerged Lands Act, but whether Florida demonstrated an historic claim to boundaries beyond the three-mile limit in accordance with criteria outlined in the Act.

The Court ruled that Florida had demonstrated its historic claim by finding (a) that the State's 1868 Constitution had described seaward boundaries, and (b) that in the Admission Act of June 25, 1868, Congress approved them in response to requirements of the Reconstruction Acts of March 2 and March 23, 1867.

In so finding, the Court expressly overruled the United States' assertion that the Congress had not made careful scrutiny of the boundaries described in the Readmission Constitution.

> ***We cannot know, for sure, whether all or any of the Congressmen or Senators gave special attention to Florida's boundary description. We are sure, however, that this Constitution was examined and approved as a whole, regardless of how thorough that examination may have been, and we think that the 1953 Submerged Lands Act requires no more than this. Moreover, the Hearings and the Reports on the Submerged Lands Act show, as the Government's brief concedes, that those who wrote into that measure a provision whereby a State was granted up to three leagues if such a boundary had been "heretofore approved by Congress", had their minds specifically focused on Florida's claim based on submission of its 1868 Constitution to Congress.***

Florida's boundaries "confirmed" and "restored", then, by the Submerged Lands Act were those boundaries described in

its 1868 Constitution. They did not *originate* in 1953. They have been what they are for more than 100 years. And they extend, in places, more than three miles from the coastline into the Atlantic and more than three marine leagues from the beach in the Gulf.

The same boundary description approved by Congress and this Court speaks of Florida's territory extending "thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands . . ." There is no interruption in this call. It is a continuous line, without provision for "upper keys" or "lower keys" or island clusters severed from territorial continuity by virtue of channel depth or distance between low-tide elevations. Moreover, the seaward edge of the reef-line falls outside the three-mile limit, and the distance between the Dry Tortugas and Marquesas is in excess of six marine leagues. Does this mean that the boundary description recited above does not mean what it says, or that the territory of Florida is something less than described in its 1868 Constitution? The United States and the Special Master answer both questions affirmatively because they interpret the Submerged Lands Act to be a territorial grant. (Report, pp. 29-36; Exceptions, pp. 2, 15, 17).

If one accepts the premise that Florida's seaward boundaries originated in 1953, then the United States and the Special Master are correct and the State's case must be denied.

But, if one accepts the premise that Florida's seaward boundaries originated in 1868 – as approved by Congress – then the United States and the Special Master are in error when they seek to apply the 1953 Act as a limitation, shrinking Florida down to size consistent with a three-mile by three-league mold.

If there is any dilemma posed by these premises (and Florida respectfully submits that, since this Court's Opinion in No. 9 Original, there is scant reason to insist that, for purposes of these proceedings, the Submerged Lands Act is a territorial grant) wording of 43 U.S.C. § 1312 is helpful to show that the intent of Congress was not to assert an impermissible power to attempt the transfer of part of a state to the Federal or international maritime domain.

***Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its Constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Thus, by its terms, the Submerged Lands Act makes room for historic boundaries which, like Florida's, rise seaward of the 3-mile or 3-league limits.

Any other interpretation of the Submerged Lands Act would be constitutionally unsound, unless it is suggested that Congress has power to dismember the States. Surely, an Act of Congress expressly lopping off the Keys from the State of Florida would be void and of no effect.

Either that, or the States and the Union of them, are something less than "indestructible." *Texas* v. *White*, 7 Wall. (U.S.) 700, 725 (1869). How, then, can it be posed that Congress impliedly intersected slices out of the Keys by quit-claiming a limited strip of territorial seabed to all coastal states in the Submerged Lands Act? It has not been argued that Congress has this power. Yet, the exercise of such power is necessary to the result.

II

THE CONDUCT OF FOREIGN AFFAIRS CANNOT EXCUSE AN ATTEMPT TO DIMINISH THE TERRITORIAL INTEGRITY OF A STATE OF THE UNION.

"When the Revolution took place, the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the Constitution."[4]

[4]Chief Justice Taney delivering the Opinion of the Court in *Martin* vs. *Waddell*, 16 Peters (U.S.) 366 at 410 (1842).

> *"***To give to the United States the right to transfer the title to the shores, and the soils under the navigable waters, would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty, and deprive the States of the power to exercise a numerous and important class of police powers."*[5]

Throughout these proceedings, the United States' concern for its position with regard to foreign affairs has been paramount. It is the "international significance" of the Master's determination that Florida Bay is a juridical bay that brings exception from the Complainant, not the practical effect of such a finding vis-a-vis mineral rights.

The issue is framed in terms of international law, and arguments posed by the United States are arguments more appropriately made in some international court between disputing nations. An example is at page 12 of the United States Exceptions, where, from the Government's "foreign affairs" point of view, the issue controlling the Master's juridical bay finding is crystalized:

> ***The question here is not whether the headland of a bay may be located on an island, but rather whether a juridical bay may be formed by a fringe of islands projecting out from a generally flat or convex mainland.

In all due respect to the United States, it is submitted that reliance upon international law or conventions or the implementation of foreign affairs is not material to the core issue. Such considerations are only peripheral to the center of our controversy and obscure the nature of the case.

There is nothing in the record to indicate that innocent passage of foreign shipping is, in fact, frustrated by Defendant's assertion that the Keys out to and including the Tortugas constitute an integral part of the State of Florida. Nor is there any evidence that innocent passage in the area between the Keys and the mainland, denominated Florida Bay, has been or will be denied should the area be found to be an historic bay constituting inland waters of the State of Florida.

[5]Mr. Justice McKinley delivering the Opinion of the Court in *Pollard's Lessee* vs. *Hagan*, 3 How. (U.S.) 212 at 230 (1845).

While the State is in sympathy with the United States in all problems involving international relations, it is respectfully submitted that decisions by Indonesia and the Phillipines to draw baselines connecting their outer islands cannot affect the outcome of a domestic dispute between the United States and Florida over location of the State's seaward boundary.

If, as Florida urges, it can be demonstrated by a reasonable preponderance of the evidence, that Florida Bay is an historic bay, then exceptions raised and discussed by the United States will be deemed moot. But if not, if the Court sustains the Master despite evidence discussed here that he applied an unfair and unwarranted evidentiary burden, then it is respectfully submitted that foreign policy considerations are secondary to considerations of Federal-State relations at issue here. The position of the United States as to disapproving use of baselines to connect Indonesian islands may change overnight (as, indeed, certain United States' positions vis-a-vis territorial sea, contiguous zone and high seas have dramatically changed during the presently on-going Law of the Sea Conference), but the state-federal balance sought during this continuing process of developing a more perfect Union is a permanent and unyielding demand upon all of us.

Certainly, if Florida Bay is an historic bay and, hence, part of the inland waters of the State, foreign policy considerations would hardly justify application of closing lines as required by the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Part 2) 1606 (See, U. S. Exceptions, pp. 9, 16-17). To suggest that inland waters of the State can be annexed to the Federal or international maritime domain because of their *navigability* or for reason of foreign policy considerations in another part of the world is to suggest a *non sequitur* and to deny lessons of previous cases. In *DeGeofroy* vs. *Riggs*, 133 U.S. 258, (1889), dictum at page 267 instructs against use of treaty power to violate State sovereignty.

> ***The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or its departments, and those arising from the nature of the

> government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent.***

This is certainly not new. The territorial and political integrity of states have been challenged before and upheld by this Court. If the State of Florida is "endowed with all the functions essential to separate and independent existence", *Lane County* v. *Oregon*, 7 Wall. (U.S.) 76 (1869), then neither the Congress via legislation nor the Executive Department via international treaty may diminish State territorial sovereignty. If they can, paraphrasing Mr. Justice Lurton in *Coyle* vs. *Smith*, 221 U. S. 559 at 580 (1910), an 'equal footing doctrine' case, then the Union will not be the Union of the Constitution.

Thus, when the United States excepts to the Master's conclusions for reasons of law according to the Convention on the Territorial Sea and the Contiguous Zone, it again raises the shadow of a *non sequitur*, for decisions divesting Florida of its territory cannot be so founded.

It is clear from reports to the Senate Committee on Foreign Relations by Mr. Arthur H. Dean, special consultant to the Department of State, who was Chief of the United States delegation at the negotiations in Geneva which resulted in the Convention on the Territorial Sea, that the Convention was not meant to affect relative rights as between the several states of the United States and the Federal Government, but was only to affect the rights of the United States as a sovereign state with respect to the rights of other sovereign states. (See, Congressional Record-Senate, April 26, 1960, page 11191). Florida's stipulation agreeing with the United States that 'pertinent sections' of the Convention would govern determination of Florida's coastline was entered into in good faith to seek a common ground, particularly of definitions, where they seemed appropriate. It was not meant as a surrender to an international view of this controversy. Nor by such stipulation could counsel for these parties endow the Conventions with a force and a relevance never accorded them by their architects.

CONCLUSION

It should be noted that the essential nature of evidence argued herein, i.e. the danger zone regulations demonstrating definitive acts of United States' sovereignty in Florida Bay, and Senator Fulbright's report to the Senate that the Cuban government had acquiesced in observing Florida's shrimp conservation regulations in Florida Bay, has not been put squarely to the Master in argument, and that the United States has not had opportunity to comment about these specific matters. They appear in this Brief by consent of the United States conveyed to the undersigned.

In view of this evidence, it would be difficult to maintain a position grounded on an absence of acts of dominion by the United States in Florida Bay. Thus, the California II Rule of evidence should not have been imposed upon Florida.

Inasmuch as the United States has had no opportunity to respond to this material, it is Florida's position that this matter should be remanded to the Special Master for consideration of the evidence under a different test than that thus far imposed.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

DANIEL S. DEARING
Chief Trial Counsel

August, 1974

Department of Legal Affairs
725 South Calhoun Street
Bloxham Building
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing Response to Exceptions of the United States to the Report of the Special Master filed by Defendant, STATE OF FLORIDA, have been served upon Robert H. Bork, Solicitor General of the United States of America; and Michael W. Reed, Esq., Department of Justice, Washington, D.C., 20530, Attorneys for Plaintiff; and Brice M. Clagett, Esq., Covington & Burling, 888 Sixteenth Street, N.W., Washington, D.C., 20006, Attorneys for Amici Curiae, by United States Mail this 8th day of August, 1974.

DANIEL S. DEARING
Chief Trial Counsel
Attorney for Defendant,
STATE OF FLORIDA.

SUPREME COURT, U. S.
FILED
SEP 7 1974
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 52, Original

UNITED STATES OF AMERICA,
Plaintiff,

-v-

STATE OF FLORIDA,
Defendant

Florida's Response to Exceptions of the United States to the Report of the Special Master

ROBERT L. SHEVIN
Attorney General

DANIEL S. DEARING
Chief Trial Counsel

725 So. Calhoun Street
Tallahassee, Florida 32304

APPENDIX

APPENDIX

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSP

24 July 1974

Honorable Thomas A. Harris
Assistant Attorney General
Department of Legal Affairs
Civil Division
Capitol Building
Tallahassee, Florida 32304

RECEIVED
JUL 25 1974
ATTORNEY GENERAL'S OFFICE

Dear Mr. Harris:

Reference is made to the telephone conversation with Mrs. Claydon, this office, on 22 July 1974 in which you requested regulations promulgated in Florida Bay.

Our records show that only three regulations were established in this area. Copies are inclosed.

As you will note, Danger Area 204.95 was formerly designated 204.85c and has been amended several times. Danger Area 204.86 was established 29 December 1948 and revoked 16 July 1973. Restricted Area 207.173a was established 7 April 1969.

It is hoped this will serve your need.

Sincerely yours,

Joseph T. Fascata
FOR

3 Incl
As stated

B. N. GOODE
Chief, Regulatory Branch

APPENDIX 1

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Current Regulations

SAJSP Danger Zone Regulations 24 October 1966

TITLE 33-NAVIGATION AND NAVIGABLE WATERS
CHAPTER II-CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY
PART 204 -- DANGER ZONE REGULATIONS
STRAITS OF FLORIDA AND FLORIDA BAY, FLA.

Pursuant to the provisions of Section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) Section 204.95 establishing and governing the use and navigation of danger zones in the Straits of Florida and Florida Bay, Florida, is hereby amended with respect to subparagraph (a)(2), revoking one of the danger zones in subdivision (iii), effective 30 days after publication in the FEDERAL REGISTER as follows:

204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Florida.

(a) The danger zones.

(1) Operational training area. Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45'00", longitude 82°07'00"; thence southeast to latitude 24°49'00", longitude 81°55'00"; thence southwest to latitude 24°37'30", longitude 82°00'30"; thence westerly to latitude 24°37'30", longitude 82°06'00"; thence southerly to latitude 24°28'30", longitude 82°06'00"; thence southerly to latitude 24°25'00", longitude 82°06'30"; thence easterly to latitude 24°25'00", longitude 81°57'00"; thence southwesterly to latitude 23°30'00", longitude 82°19'00"; thence westerly to latitude 23°30'00", longitude 82°46'00"; thence northwesterly to latitude 23°52'30", longitude 83°11'00"; thence northerly to latitude 24°25'00", longitude 83°11'00"; thence easterly to latitude 24°25'00", longitude 83°08'00"; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35'00", longitude 81°41'15" to latitude 25°45'05", longitude 82°23'30"; thence east to point of beginning.

(2) Aerial gunnery range. (Previously revoked).

(3) Bombing and strafing target areas. (i) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4' and longitude 82°10.9', not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(ii) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6' and longitude 82°11.6', not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platform, will be used as high altitude horizontal bombing range utilizing live ordnance up to and including 1,800 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

APPENDIX 2

(iii) A circular area located west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°34'30" and longitude 82°14'00".

(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, and give such other pertinent information as may be required in the interests of safety.

(2) Watercraft shall not be prohibited from passing through the operational training area except when the operations being conducted are of such nature that the exclusion of watercraft is required in the interest of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that bombing and strafing operations will take place over the designated target areas or that other operations hazardous to watercraft are proposed to be conducted in a specifically described portion of the overall area, all watercraft will be excluded from the target area or otherwise described zone of operations and no vessel shall enter or remain therein during the period operations are in progress.

(4) Aircraft and naval vessels conducting operations in any part of the operational training area will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave and upon being so warned the vessel shall leave immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S. C., and such agencies as he may designate.

Approved: 26 Sep 1966

/s/ Stanley R. Resor
Secretary of the Army

NOTE: The danger areas described in paragraph (a)(1) and subparagraphs (i) and (ii) hereinabove are still active and subject to bombing and rocket firing therein at any time upon proper notice.

These rules and regulations will be in full force and effect 30 days after publication in the FEDERAL REGISTER. They were published in the FEDERAL REGISTER on 11 October 1966; public notices of their approval were sent to all known interested parties on 23 October 1966; they have been posted at post offices and other public places.

APPENDIX 3

U. S. ARMY ENGINEER DISTRICT, JACKSONVILLE
CORPS OF ENGINEERS
575 RIVERSIDE AVENUE
JACKSONVILLE 2, FLORIDA

Amended
Sec 24 Oct 66

SAKSP Danger Zone Regulations 23 March 1962

PART 204--DANGER ZONE REGULATIONS

STRAITS OF FLORIDA AND FLORIDA BAY, FLA.

Pursuant to the provisions of Section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), Section 204.95 establishing and governing the use and navigation of danger zones in the Straits of Florida and Florida Bay, Florida, is hereby amended prescribing paragraph (a) (3) (iii) to establish two additional bombing and strafing areas and revising paragraphs (b) (1) through (b) (4) to clarify the restrictions on the use of the areas, effective 30 days after publication in the FEDERAL REGISTER, as follows:

204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Florida. (a) The danger zones. (1) Operational training area. Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45'00", longitude 82°07'00"; thence southeast to latitude 24°49'00", longitude 81°55'00"; thence southwest to latitude 24°37'30", longitude 82°00'30"; thence westerly to latitude 24°37'30", longitude 82°06'00"; thence southerly to latitude 24°28'30", longitude 82°06'00"; thence southerly to latitude 24°25'00", longitude 82°06'30"; thence easterly to latitude 24°25'00", longitude 81°57'00"; thence southwesterly to latitude 23°30'00", longitude 82°19'00"; thence westerly to latitude 23°30'00", longitude 82°46'00"; thence northwesterly to latitude 23°52'30", longitude 83°11'00"; thence northerly to latitude 24°25'00", longitude 83°11'00"; thence easterly to latitude 24°25'00", longitude 83°08'00"; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35'00", longitude 81°41'15" to latitude 25°45'05", longitude 82°23'30"; thence east to point of beginning.

(2) Aerial gunnery range. (Previously revoked).

(3) Bombing and strafing target areas. (i) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4' and longitude 82°10.9', not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(ii) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6' and longitude 82°11.6', not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platform, will be used as high altitude horizontal bombing range utilizing live ordnance up to and including 1,800 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

APPENDIX 4

(iii) Two circular areas located west of Marqueses Keys each with a radius of two nautical miles, one having its center at latitude 24°34'30" and longitude 82°14'00", and the other having its center at latitude 24°34'30" and longitude 82°24'00".

(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, and give such other pertinent information as may be required in the interests of safety.

(2) Watercraft shall not be prohibited from passing through the operational training area except when the operations being conducted are of such nature that the exclusion of watercraft is required in the interest of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that bombing and strafing operations will take place over the designated target areas or that other operations hazardous to watercraft are proposed to be conducted in a specifically described portion of the overall area, all watercraft will be excluded from the target area or otherwise described zone of operations and no vessel shall enter or remain therein during the period operations are in progress.

(4) Aircraft and naval vessels conducting operations in any part of the operational training area will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave and upon being so warned the vessel shall leave immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S. C., and such agencies as he may designate.

Approved: FEB 28, 1962

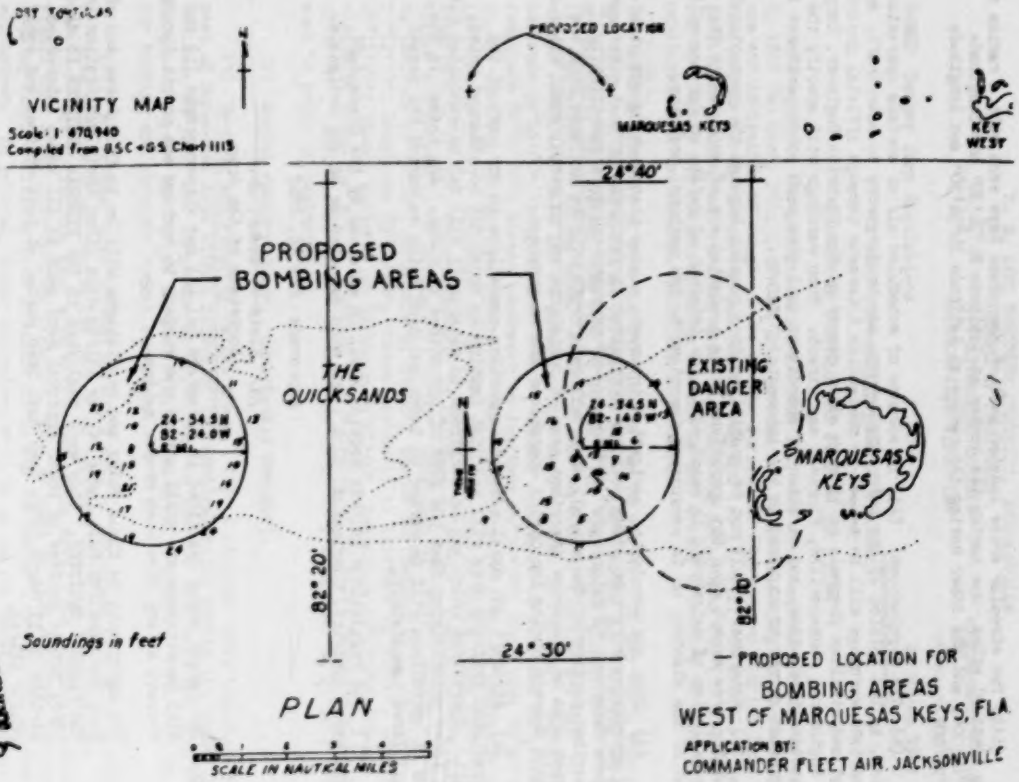
/s/ Elvis J. Stahr, Jr.
Secretary of the Army

NOTE: The danger areas described in paragraph (a) (1) and subparagraphs (i) and (ii) hereinabove are still active and subject to bombing and rocket firing therein at any time upon proper notice.

The amendments to these rules and regulations will be in full force and effect and have the full force of law thirty days after their publication in the FEDERAL REGISTER. They were published in the FEDERAL REGISTER 16 March 1962; public notices of their approval were sent to all known interested parties on 23 March 1962; they have been posted at post offices and other public places.

APPENDIX 5

COPY BOUND VERTICAL



APPENDIX 6

U. S. ARMY ENGINEER DISTRICT, JACKSONVILLE
CORPS OF ENGINEERS
575 RIVERSIDE AVENUE
JACKSONVILLE 2, FLORIDA

Amended
See 23 May 1962

SAKSP Danger Zone Regulations 29 March 1960

PART 204--DANGER ZONE REGULATIONS

STRAITS OF FLORIDA AND FLORIDA BAY, FLORIDA

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), Section 204.95 governing the use and navigation of Naval operational training, aerial gunnery, and bombing and strafing areas in the Straits of Florida and Florida Bay, Florida, is hereby amended revoking subparagraphs (i) and (ii) of paragraph (a) (3), as follows:

204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla. (a) The danger zones. (1) Operational training area. Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45'00", longitude 82°07'00", thence southeast to latitude 24°49'00", longitude 81°55'00"; thence southwest to latitude 24°37'30", longitude 82°00'30"; thence westerly to latitude 24°37'30", longitude 82°06'00" thence southerly to latitude 24°28'30", longitude 82°06'00", thence southerly to latitude 24°25'00", longitude 82°06'30"; thence easterly to latitude 24° 25'00", longitude 81°57'00"; thence southwesterly to latitude 23°30'00", longitude 82°19'00"; thence westerly to latitude 23°30'00", longitude 82°41'00" thence northwesterly to latitude 23°52'30", longitude 83°11'00"; thence northerly to latitude 24°25'00", longitude 83°11'00"; thence easterly to latitude 24°25'00", longitude 83°08'00"; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35'00", longitude 81°41'15" to latitude 25°45'05", longitude 82°23'30"; thence east to point of beginning.

(2) Aerial gunnery range. (Previously revoked).

(3) Bombing and strafing target areas. (i) (Revoked).

(ii) (Revoked).

(iii) (Previously revoked).

(iv) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4' and longitude 82° 10.9', not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(v) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6' and longitude

APPENDIX 7

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82°11.6', not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platforms, will be used as high altitude horizontal bombing range utilizing live ordinance up to and including 1,000 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, give such other pertinent information as may be required in the interests of safety, and state whether watercraft will be excluded from the zone of operations which is defined as that portion of a danger zone within which watercraft might be endangered by the operations in progress.

(2) Watercraft shall not be prohibited from passing through a danger zone except when the operations being conducted are of such a nature that the exclusion of watercraft from the zone of operations is required in the interests of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that watercraft will be excluded from the zone of operations, no vessel shall enter or remain in such area during the period the operations are in progress.

(4) Aircraft and naval vessels conducting operations in a danger zone will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave, and upon being so warned the vessel shall leave the zone of operations immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S. C., and such agencies as he may designate.

Approved: 7 March 1960

/s/ William M. Brucker
Secretary of the Army

NOTE: The targets within the danger areas which have been revoked by this notice consisting of a grounded LCI and a grounded eagle boat are still in the waters and are submerged at a depth of about one foot below mean low water and located at latitude 24°34'30" N., longitude 82°14'00" W., and at latitude 24°36'20" N., longitude 82°16'25" W.

The adjacent danger zones described in subparagraph (iv) and (v) hereinabove are still active and bombing and rocket firing will continue in these areas.

APPENDIX 8

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RESTRICTED AREAS
KEY WEST, FLORIDA, COUNTY OF MONROE
APPLICATION BY U. S. NAVY

APPENDIX 9

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U. S. ARMY ENGINEER DISTRICT, JACKSONVILLE
CORPS OF ENGINEERS
575 RIVERSIDE AVENUE
JACKSONVILLE 2, FLORIDA

Amended
Ltr 29 Mar 1960

SAKSP Danger Zone Regulations 25 September 1959

PART 204—DANGER ZONE REGULATIONS

STRAITS OF FLORIDA AND FLORIDA BAY, FLORIDA

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), Section 204.95 governing the use and navigation of Naval operational training, aerial gunnery, and bombing and strafing areas in the Straits of Florida and Florida Bay, Florida, is hereby amended to establish a new bombing and strafing area, as follows:

204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla. (a) The danger zones. (1) Operational training area. Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45'00", longitude 82°07'00", thence southeast to latitude 24°49'00", longitude 81°55'00"; thence southwest to latitude 24°37'30", longitude 82°00'30"; thence westerly to latitude 24°37'30", longitude 82°06'00"; thence southerly to latitude 24°28'30", longitude 82°06'00"; thence southerly to latitude 24°25'00", longitude 82°06'30"; thence easterly to latitude 24° 25'00", longitude 81°57'00"; thence southwesterly to latitude 23°30'00", longitude 82°19'00"; thence westerly to latitude 23°30'00", longitude 82°46'00"; thence northwesterly to latitude 23°52'30", longitude 83°11'00"; thence northerly to latitude 24°25'00", longitude 83°11'00"; thence easterly to latitude 24°25'00", longitude 83°08'00"; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35'00", longitude 81°41'15" to latitude 25°45'05", longitude 82°23'30"; thence east to point of beginning.

(2) Aerial gunnery range. (Revoked).

(3) Bombing and strafing target areas. (i) A circular area immediately west of Marquesas Keys with a radius of two and one-half statute miles having its center at latitude 24°34'30", longitude 82°14'00". The target located within this area, a grounded LCI, will be used for air-to-ground gunnery exercises.

(ii) A circular area immediately north of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°38'20", longitude 82°06'25". The target located within this area, a grounded eagle boat, will be used for bombing exercises using water-filled bombs only.

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(iii) (Revoked).

(iv) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4' and longitude 82° 10.9', not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(v) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6' and longitude 82°11.6', not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platforms, will be used as high altitude horizontal bombing range utilizing live ordnance up to and including 1,800 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

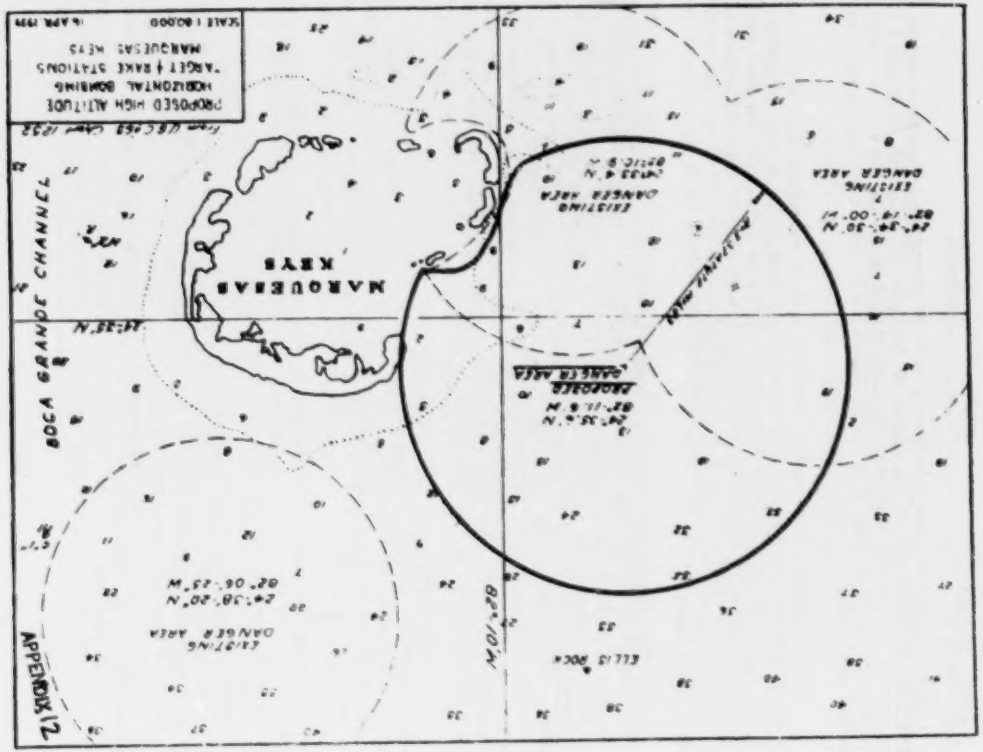
(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, give such other pertinent information as may be required in the interests of safety, and state whether watercraft will be excluded from the zone of operations which is defined as that portion of a danger zone within which watercraft might be endangered by the operations in progress.

(2) Watercraft shall not be prohibited from passing through a danger zone except when the operations being conducted are of such a nature that the exclusion of watercraft from the zone of operations is required in the interests of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that watercraft will be excluded from the zone of operations, no vessel shall enter or remain in such area during the period the operations are in progress.

(4) Aircraft and naval vessels conducting operations in a danger zone will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave, and upon being so warned the vessel shall leave the zone of operations immediately.

APPENDIX 11



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DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

SAJSP Restricted Area - Key West 6 May 1969

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER II - CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY
PART 207 - NAVIGATION REGULATIONS
KEY WEST HARBOR, FLA

Pursuant to the provisions of Section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), Section 207.173a establishing and governing the use of a restricted area in Key West Harbor, Florida, is hereby amended in its entirety, effective 30 days after publication in the FEDERAL REGISTER as follows:

207.173a Key West Harbor, at U. S. Naval Base, Key West, Fla; naval restricted area.

(a) The areas. (1) All waters within one hundred yards of the U. S. Naval Station beginning at a point one hundred yards due south of the south end of Whitehead Street at latitude 24°32'42.3"N, longitude 81°47'51"W, and extending westerly and northerly around the U. S. Naval Station to latitude 24°33'33"N, longitude 81°48'32.7"W; and thence to the shore at latitude 24°33'32"N, longitude 81°48'29.5"W; the north end of the U. S. Coast Guard Base.

(2) All waters within one hundred yards of the U. S. Naval Station Annex and the U. S. Naval Air Station Annex beginning at the shore at latitude 24°33'47.8"N, longitude 81°47'55.6"W; thence westerly to latitude 24°33'48"N, longitude 81°48'00.9"W; thence southerly to latitude 24°33'45.8"N, longitude 81°48'01"W; thence westerly to latitude 24°33'47"N, longitude 81°48'12"W; thence northerly to latitude 24°34'00.3"N, longitude 81°48'10"W; and thence to latitude 24°33'57.6"N, longitude 81°47'20"W, one hundred yards offshore of beacon No. 13.

(3) All waters within one hundred yards of Fleming Key and within one hundred yards of the fence across Fleming Key Cove.

(b) The regulations. (1) Entering or crossing any of the restricted areas described in paragraph (a) of this section is prohibited except as follows: Privately-owned vessels properly registered and bearing identification in accordance with Federal and/or State laws and regulations, and at night showing lights required by Federal laws and U. S. Coast Guard regulations or, if no constant lights are required, then a bright white light showing all around the horizon, may transit the following portions of the restricted areas:

(i) The channel about 75 yards in width extending from the northwest corner of the U. S. Naval Station Annex eastward beneath the Fleming Key bridge along the north shore of the U. S. Naval Station Annex and the U. S. Naval Air Station Annex:

APPENDIX 13

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(ii) A channel 150 feet in width which will extend easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the Navy Annex piers on the north side of the Bight. While legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited from mooring, anchoring, or fishing within 50 feet of any U. S. Navy owned pier or craft.

(2) Stopping or landing by other than government owned vessels and certain specifically authorized private craft in any of the restricted areas described in paragraph (a) of this section is prohibited.

(3) Vessels using the restricted channel areas described in subdivisions (i) and (ii) shall proceed at speeds commensurate with minimum wake.

(4) The regulations in this section shall be enforced by the Commander, U. S. Naval Base, Key West, Florida, and such agencies as he may designate.

Approved: 7 April 1969

/s/ Stanley R. Resor

/t/ STANLEY R. RESOR
Secretary of the Army

These rules and regulations will be in full force and effect 30 days after their publication in the FEDERAL REGISTER. They were published in the FEDERAL REGISTER on 25 April 1969; public notices of their approval were sent to all known interested parties on 6 May 1969; they have been posted at post offices and other public places.

APPENDIX 14

24 June 1948

PART 204--DANGER ZONE REGULATIONS

STRAITS OF FLORIDA AND FLORIDA BAY IN VICINITY OF KEY WEST, FLA.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), section 204.85c is hereby prescribed to govern the use and navigation of waters of the Straits of Florida and Florida Bay in the vicinity of Key West, Florida, comprising restricted areas for operations of the Naval Air Station, Key West, as follows:

204.85c Straits of Florida in Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla.

(a) The danger zones. (1) Operational training area. Waters of the Straits of Florida southwest of Key West bounded as follows: Beginning at latitude 24°18'00", longitude 82°09'30"; thence south-southwest to latitude 23°30'30", longitude 82°31'30"; thence generally northwest by north, along an arc of a circle having its center at latitude 24°35'00", longitude 81°41'16", to latitude 24°18'00", longitude 83°06'30"; thence due east to the point of beginning. This area will be used for bombing, torpedo, and air-to-air combat or other special exercises.

(2) Aerial gunnery range. Waters in the vicinity of Florida Bay, northeast of Key West bounded as follows: Beginning at latitude 25°30'00", longitude 81°22'00"; thence south to latitude 25°01'45", longitude 81°20'30"; thence southwest to latitude 24°51'15", longitude 81°42'00"; thence north to latitude 25°42'00", longitude 81°46'00"; thence southeast to the point of beginning. This area will be used for air-to-air gunnery or other exercises.

(3) Bombing and strafing target areas. (i) A circular area immediately west of Marquesas Keys with a radius of two and one-half statute miles having its center at latitude 24°34'30", longitude 82°14'00". The target located within this area, a grounded LCI, will be used for air-to-ground gunnery exercises.

(ii) A circular area immediately north of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°38'20", longitude 82°06'25". The target located within this area, a grounded eagle boat, will be used for bombing exercises using water-filled bombs only.

(iii) A rectangular area immediately northeast of Key West bounded as follows: Beginning at latitude 24°40'14", longitude 81°35'12"; thence to latitude 24°38'25", longitude 81°34'38"; thence to latitude 24°37'10", longitude 81°38'46"; thence to latitude 24°38'50", longitude 81°39'23"; thence to the point of beginning. This area, an aircraft rocket range, will be used for air-to-ground rocket firing exercises.

Said Superseded

APPENDIX 15

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(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, give such other pertinent information as may be required in the interests of safety, and state whether watercraft will be excluded from the zone of operations which is defined as that portion of a danger zone within which watercraft might be endangered by the operations in progress.

(2) Watercraft shall not be prohibited from passing through a danger zone except when the operations being conducted are of such a nature that the exclusion of watercraft from the zone of operations is required in the interests of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that watercraft will be excluded from the zone of operations, no vessel shall enter or remain in such area during the period the operations are in progress.

(4) Aircraft and naval vessels conducting operations in a danger zone will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave, and upon being so warned the vessel shall leave the zone of operations immediately.

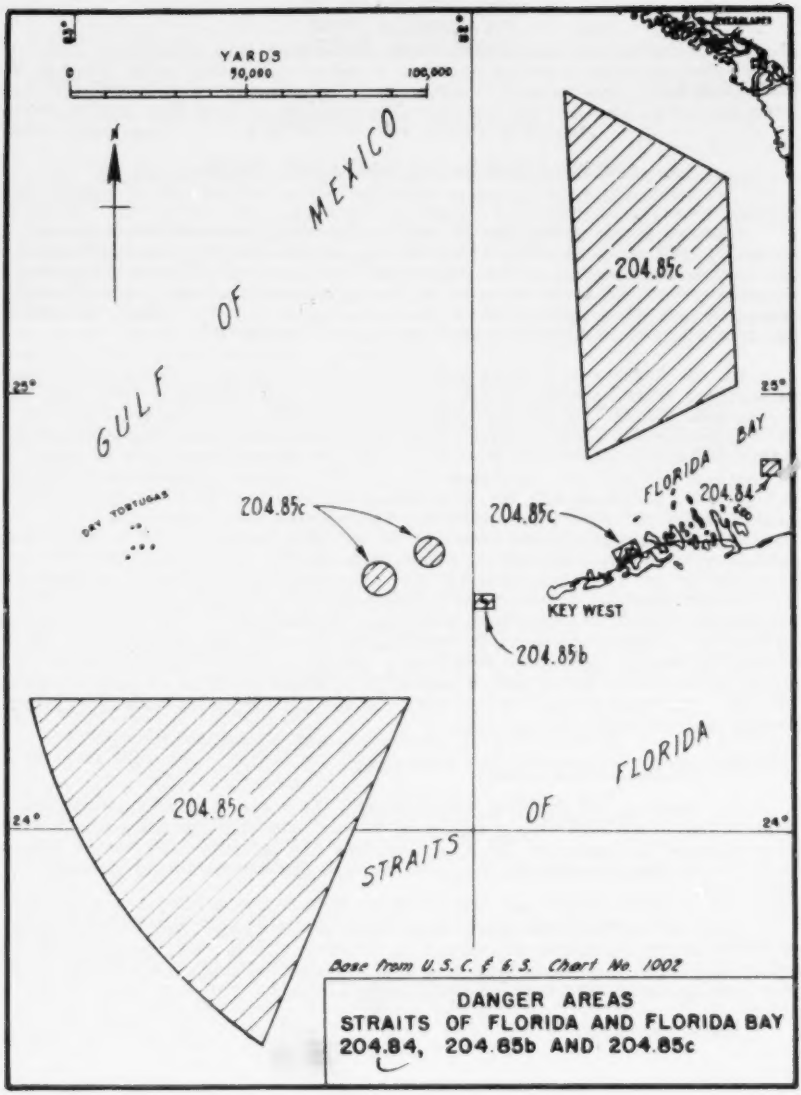
(5) The regulations in this section shall be enforced by the Commandant Seventh Naval District, Jacksonville, Florida, and such agencies as he may designate.

Approved June 1, 1948

/s/ Kenneth C. Royall
Secretary of the Army

These rules and regulations will be in full force and effect and have the force of law 30 days after their publication in the Federal Register. They were published in the Federal Register on 22 June 1948; public notice of their approval were sent to all known interested parties on 24 June 1948. They have been posted in the post offices at Key West, Miami, Miami Beach, Ft. Lauderdale, Stuart, Fort Pierce, Palm Beach, West Palm Beach, and Lake Worth, all in Florida; and furnished to local press for publication as a news item.

APPENDIX 16



APPENDIX 17

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CORPS OF ENGINEERS, U. S. ARMY
OFFICE OF THE DISTRICT ENGINEER
JACKSONVILLE DISTRICT
575 RIVERSIDE AVENUE
JACKSONVILLE, FLORIDA

SAKSP 800.2121 19 July 1957

PART 204--DANGER ZONE REGULATIONS

STRAITS OF FLORIDA AND FLORIDA BAY, FLORIDA

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), Section 204.95 governing the use and navigation of waters of the Straits of Florida and Florida Bay, Florida, comprising Naval operational training, aerial gunnery, and bombing and strafing areas, is hereby amended to delete the presently established areas, to establish new areas, and to change the enforcing agency as follows:

204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla. (a) The danger zones. (1) Operational training area. Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25° 45' 00", longitude 82° 07' 00", thence southeast to latitude 24° 49' 00", longitude 81° 55' 00"; thence southwest to latitude 24° 37' 30", longitude 82° 00' 30"; thence westerly to latitude 24° 37' 30", longitude 82° 06' 00"; thence southerly to latitude 24° 28' 30", longitude 82° 06' 00"; thence southerly to latitude 24° 25' 00", longitude 82° 06' 30"; thence easterly to latitude 24° 25' 00", longitude 81° 57' 00"; thence southwesterly to latitude 23° 30' 00", longitude 82° 19' 00"; thence westerly to latitude 23° 30' 00", longitude 82° 46' 00"; thence northwesterly to latitude 23° 52' 30", longitude 83° 11' 30"; thence northerly to latitude 24° 25' 00", longitude 83° 11' 00"; thence easterly to latitude 24° 25' 00", longitude 83° 00' 00"; thence clockwise along the arc of a circle with a radius of 9½ miles centered at latitude 24° 35' 00", longitude 81° 41' 15" to latitude 25° 45' 05", longitude 82° 23' 30"; thence east to point of beginning.

(2) Aerial gunnery range. (Revoked).

(3) Bombing and strafing target areas. (i) A circular area immediately west of Marquesas Keys with a radius of two and one-half statute miles having its center at latitude 24° 34' 30", longitude 82° 14' 00". The target located within this area, a grounded LCI, will be used for air-to-ground gunnery exercises.

(ii) A circular area immediately north of Marquesas Keys with a radius of two nautical miles having its center at latitude 24° 38' 20", longitude 82° 05' 25". The target located within this area, a grounded eagle boat, will be used for bombing exercises using water-filled bombs only.

(iii) (Revoked).

APPENDIX 18

(iv) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24° 33.4' and longitude 82° 10.9', not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(b) The regulations. (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, give such other pertinent information as may be required in the interests of safety, and state whether watercraft will be excluded from the zone of operations which is defined as that portion of a danger zone within which watercraft might be endangered by the operations in progress.

(2) Watercraft shall not be prohibited from passing through a danger zone except when the operations being conducted are of such a nature that the exclusion of watercraft from the zone of operations is required in the interests of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that watercraft will be excluded from the zone of operations, no vessel shall enter or remain in such area during the period the operations are in progress.

(4) Aircraft and naval vessels conducting operations in a danger zone will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave, and upon being so warned the vessel shall leave the zone of operations immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S. C., and such agencies as he may designate.

Approved: 23 May 1957

/s/ Dewey Short
Assistant Secretary of the Army
(Civil-Military Affairs)

These rules and regulations will be in full force and effect and have the full force of law thirty days after their publication in the Federal Register. They were published in the Federal Register 13 July 1957; public notices of their approval were sent to all known interested parties on 19 July 1957; they have been posted in the post offices at Miami, Miami Beach, Homestead, Florida City, Marathon, Key West, Key Largo, Islamorada, Perrine, Ft. Lauderdale, Palm Beach, West Palm Beach, Ft. Myers, St. Petersburg, Tampa and Clearwater, all in Florida, and furnished to local press for publication as a news item.

APPENDIX 19

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Amended

DANGER AREA

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), and chapter XIX of the Army Appropriation Act of July 9, 1918 (40 Stat. 892; 33 U.S.C. 3), section 204.84 is amended to govern the use and navigation in Florida Bay northeast of Pine Islands as follows:

204.~~84~~ 86 Florida Bay northeast of Pine Islands, Fla.; live firing area for strafing. (a) The danger zone. (1) Bounded on the north by latitude 24° 51' 08"; on the east by longitude 81° 13' 52"; on the south by latitude 24° 48' 52"; and on the west by longitude 81° 16' 21".

(2) The hull of an ex-naval vessel (PE-19) is located in the center of the area and is used by United States Fleet Aircraft for live strafing.

(b) The regulations. (1) The area is closed to all vessels at all times.

(2) The regulations in this section shall be enforced by the Captain of the Port, Key West, Florida.

Approved 29 December 1948.

William H. Draper, Jr.
Acting Secretary of the Army.

These regulations, when published, have the force of law. They were published in the Federal Register on 31 December 1948; public notices of their approval were sent to all interested persons known to this office on 1 March 1949; they have been posted at post offices at Key West, Marathon, Tavernier, Florida City, Homestead, Miami and Miami Beach, Florida.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER II - CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204 - DANGER ZONE REGULATIONS

FLORIDA BAY, FLORIDA

Pursuant to the provisions of Section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) Section 204.86 establishing and governing the use of a danger zone in Florida Bay, Northeast of Pine Islands, Florida is hereby revoked, effective upon publication in the Federal Register.

Since the revocation constitutes only a procedural matter, notice of proposed rule making and public procedures thereto are considered unnecessary. Accordingly, Part 204.86 of Title 33 of the Code of Federal Regulations is hereby revoked as follows:

204.86 Florida Bay, Northeast of Pine Islands, Florida live firing area for strafing. (Revoked)

DATE 16 JUL 1973

Approved: Hadlai A. Hull

Acting Secretary of the Army

APPENDIX 21

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing APPENDIX have been served upon Robert H. Bork, Solicitor General of the United States of America; and Michael W. Reed, Esq., Department of Justice, Washington, D.C., 20530, Attorneys for Plaintiff; and Brice M. Clagett, Esq., Covington & Burling, 888 Sixteenth Street, N.W., Washington, D.C., 20006, Attorneys for Amici Curiae, by United States Mail, this 8th day of August, 1974.

DANIEL S. DEARING
Chief Trial Counsel
Attorney for Defendant,
STATE OF FLORIDA.